United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

No. 22,521

300

IN THE UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT

GLYNN H. GOODMAN, APPELLANT

v.

UNITED STATES OF AMERICA, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PETITION FOR REHEARING

WILLIAM D. RUCKELSHAUS,
Assistant Attorney General,

THOMAS A. FLANNERY,
United States Attorney,

ROBERT V. ZENER,
Attorney,
Department of Justice,
Washington, D. C. 20530.

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PETITION FOR REHEARING

The purpose of this petition for rehearing is to obtain clarification as to the proper disposition of the case on remand.

In the concluding paragraph of its opinion, the Court summarizes its holding as follows: "Fidelity to the purposes of the Veterans' Preference Act dictates that the resignation be deemed to have been withdrawn * * *." (Slip Op., p. 12) From a strictly technical point of view, the consequence of this holding is that appellant is in the status of an employee against whom charges are pending, but who has not been separated according to the procedures specified in Section 14 of the Veterans Preference Act, 5 U.S.C. 7511, 7512, 7701 (1964 ed., Supp. III). In these circumstances, the normal consequence would be that the employee is entitled to reinstatement as of the date of separation, until such time as the employing agency completes the procedures specified in the Veterans' Preference Act. Until the completion of such procedures and the rendition by the employing agency of an adverse decision on the merits of the pending charges, the Civil

Service Commission would have no jurisdiction to entertain an appeal by the employee and to consider the merits of the charges against him. 5 U.S.C. 7701 (1964 ed., Supp. III). In this case, application of these rules would mean that appellant is presently entitled, under this Court's opinion, to reinstatement as of October 27, 1961; and such reinstatement would bring with it an automatic right to over 8 years of back pay. 5 U.S.C. 5596 (1964 ed., Supp. III). See Williams v. Brown, 128 U.S. App. D.C. 12, 384 F. 2d 981 (1967).

However, in the concluding paragraph of its opinion, the Court also states that "appellant is entitled to have the appeal he filed with the Civil Service Commission determined on the merits of the charges made against him * * *." (Slip Op., p. 12) The implication of this statement is that the Civil Service Commission should hear the merits of the case and sustain the discharge if the pending charges are supported by the evidence and are believed to warrant discharge. The purpose of this petition is to seek clarification as to whether the Commission should apply the normal rules and order appellant to be reinstated forthwith, without any consideration of the merits of the charges, until such time as the Bureau renders an adverse decision pursuant to the Veterans Preference Act, or whether, as the Court seems to suggest, the Civil Service Commission should proceed to determine the case on the merits of the pending charges and sustain the discharge in the event that the charges are found to be meritorious.

If appellant is ordered to be reinstated, under the Back Pay Act of 1966, 5 U.S.C. 5596 (1964 ed., Supp. III) he would be automatically entitled to over 8 years of back pay. He would be entitled to such back pay even though the 8 years of delay between

appellant's termination and this Court's final decision were not the result of any fault on the part of the Bureau of Standards or the Civil Service Commission. Reinstatement is an equitable remedy, and in fashioning the remedy, the Court should take into account the automatic back pay entitlement which flows from reinstatement under the Back Pay Act. The following equitable factors are relevant to the fashioning of a remedy in this case:

(1) The Bureau of Standards in refusing to accept appellant's withdrawal of his resignation --and the Civil Service Commission in refusing to review the Bureau's action--were both acting in accordance with the general understanding of the law at that time.

(2) Two-and-one-half years elapsed between the termination of appellant's employment and the filing of his appeal with the Civil Service Commission. See Slip Op., p. 5. Whether or not this delay was the fault of appellant or may be adequately explained by the death of his lawyer, it remains true that this delay was <u>not</u> the fault of the Bureau of Standards or the Civil Service Commission.

(3) Nearly four years elapsed between this Court's decision in the first appeal, Goodman v. United States et al., 123 U.S. App. D.C. 165, 358 F. 2d 532 (1966), and the present decision. During that time, the Civil Service Commission, acting with reasonable expedition, proceeded on the basis that the dispositive issue in the case was whether appellant's resignation was voluntary--this being the only issue which this Court in its first decision ordered to be considered on remand. Accordingly, the delay between the first and second decisions of this Court is not attributable to the Bureau of Standards or the Civil Service Commission.

In view of these equitable factors, relief should be fashioned so as to avoid rendering the Government liable for a back pay award covering an 8-year period of delay for which it was not responsible. 1/ We would suggest that, under the Court's basic holding that the resignation has been withdrawn, the case should be disposed of as follows: (i) the Civil Service Commission will pass on the merits

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1/ This Court has previously rejected the argument that a large back pay liability, for which the government is not responsible, is a basis for dismissing employee discharge suits under the laches doctrine, stating that this question can be raised in the suit for back pay. See Powell v. Zuckert, 125 U.S. App. D.C. 55, 366 F. 2d 634 (1966); Ritter v. Strauss, 104 U.S. App. D.C. 301, 261 F. 2d 767 (1958). However, under the Back Pay Act of 1966, it is not possible in the suit for reinstatement to ignore the back pay issue, since back pay flows automatically from reinstatement. And while the employee's delay in certain circumstances may not be a ground for dismissing the action, a court of equity should take such delay into account in fashioning appropriate relief.

of the charges against the appellant; (ii) if the Commission determines on the merits that the charges warranted discharge, appellant will not be reinstated; and (iii) if the Commission determines on the merits that discharge was not warranted--or if such determination is made on judicial review--then reinstatement should be ordered only as of January 30, 1970, the date of this Court's second decision.

Respectfully submitted,

WILLIAM D. RUCKELSHAUS,
Assistant Attorney General,

THOMAS A. FLANNERY,
United States Attorney,

ROBERT V. ZENER,
Attorney,
Department of Justice,
Washington, D. C. 20530.

FEBRUARY 1970.

22521

383 33-3

IN THE

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. ~~19,654~~

GLYNN H. GOODMAN, Appellant,

v.

UNITED STATES OF AMERICA, ET AL., Appellees.

JOINT APPENDIX

INDEX TO JOINT APPENDIX

Index (Cont'd.)

CIVIL DOCKET

United States District Court for the District of Columbia

DATE		PROCEEDINGS 2757-64	
1964		Deposit for cost by	filed
Nov.	6	Complaint, appearance	
Nov.	6	Summons copies (7) and copies (7) of Complaint issued #1 ser 11/9/64. #2 ser 11/18/64 3,4&5 ser 11/12/64. DA ser 11/9/64. AG ser 11/20/64.	
Jan	7	Answer of defts to complaint; appearance of David C. Acheson and Ellen Lee Rark; c/m 1/7/65.	filed
Jan	7	Calendared (AC/N) (N)	
Mar	18	Motion of defts for summary judgment; statement; P&A; exhibit; c/m 3/18/65; MC 3/18/65.	filed
Mar	27	Motion of pltf for discovery and production of documents; P&A; c/m 3/26/65; MC 3/27/65.	filed
Mar	27	Stipulation extending time for pltf to answer motion for summary judgment to 4/29/65.	filed
Apr	5	Stipulation extending time for defts to answer motion for discovery to 4/19/65.	filed
Apr	16	Points and authorities of defts in opposition to motion for discovery and production; c/m 4/16/65.	filed
Apr	28	Stipulation extending time for pltf to answer motion for summary judgment to and including 5/7/65. (M/N)	filed
May	7	Opposition of pltf to motion for summary judgment; motion of plaintiff for summary judgment statements (2); P&A; affidavit; exhibit. M.C. 5/7/65	filed
May	7	Motion of pltf to amend complaint; P & A; c/m 5/7/65. M.C.5/7/65	filed
May	14	Affidavit of pltf; c/m 5/13/65.	filed
May	17	Order adding United States of America as party deft; substituting John T. Connor as deft in place of Luther H. Hodges as Secretary of Commerce; amending complaint. (N) Youngdahl,J.	
May	17	Amended complaint adding USA and changing caption to read United States of America, John T. Connor, Allen V. Astin, John W. Macy,Jr., Robert E. Hampton and Ludwig J. Andulsek.	filed
May	24	Order denying motion of plaintiff for production of documents and for discovery. (N) Youngdahl,J.	
Jun	11	Points and Authorities by defts in opposition to pltfs motion for summary judgment and exhibits (3) c/m 6/10/65.	filed

(see next page)

CIVIL DOCKET

United States District Court for the District of Columbia

ODMAN vs. HODGES, ET AL C. A. No. 2757-64 Supplemental Page N

65 DATE		PROCEEDINGS
Jun	15	Reply of pltf to defts memorandum of P&A in opposition to motion for summary judgment, c/m 6/15/65. filed
Jul	27	Order denying pltff's motion for summary judgment and granting deft's motion for summary judgment and dismissing the action. Miller, J. (N)
Jul	29	Notice of appeal by pltff; Deposit $5.00 by Dalton; copy mailed to Ellen Lee Park. Assistant U.S. Attorney, U.S. Courthouse. filed
Aug	26	Transcript of proceedings 7/26/65 Pages 1 - 21, (Rep. Robert I. Henderson) (Attorneys Copy). filed
Aug	20	Transcript of proceedings 7/26/65 Pages 1 - 21, (Rep. Robert I. Henderson) (Clerk's Copy) filed
Aug	31	Record on Appeal delivered to USCA; Deposit by Donald H. Dalton $1.25.
Aug	31	Receipt from USCA for Original Papers. filed

Standard Form 52—Rev. July 1957
Promulgated by the U. S. Civil Service Commission FPM, R-1.

REQUEST FOR PERSONNEL ACTION

1624

PART I. REQUESTING OFFICE: Unless otherwise instructed, fill in all items in this part except those inside the heavy lines. If applicable, obtain resignation and separation data on reverse side

1. NAME (Last—First—Middle—Mr.—Miss—Mrs.) #22690	2. DATE OF BIRTH	3. IDENTIFICATION (Optional)	A. Request Number
GOODMAN. Glynn H.	7/2/25		6218

B. Kind of Action Requested:
(1) Personnel (Specify appointment, reassignment, resignation, etc.)
Resignation (Career)
(2) Position (Specify establish, review, abolish, etc.)

C. Proposed Effective Date: 10/27/61
D. Date of Request: 10/5/61
E. Position Sensitivity: ~~Sensitive~~ Non-sens.

5. NATURE OF ACTION (Use standard terminology)	6. EFFECTIVE DATE OF ACTION	7. CIVIL SERVICE OR OTHER LEGAL AUTHORITY
	close of business 10-27-61	

FROM—		TO—
Electrician (L-160)	8. POSITION TITLE AND NUMBER	
W-2805-9, $2.79 p.h. , 3rd Step	9. SERIES, GRADE, SALARY	
50 - Plant Division 02 - Electric Shop	10. NAME AND LOCATION OF OFFICE BY WHICH EMPLOYED	
National Bureau of Standards Washington, D.C.	11. DUTY STATION	
Yes	12. APPORTIONED POSITION	Yes STATE: Maryland; Apportionment Waived; Proved

F. Remarks by Requesting Office (Continue in item F on reverse side, if necessary. Show, if applicable, any known additional or modified reasons for resignation)

Supervisor: George V. Hall, Foreman, Electric Shop

Resigned while action ~~charges~~ pending to be separated for: (1) (2) (3) (4) (see over)

G. Requested by (Signature and Title): W.T. Taylor, Admin. Officer
H. For additional information Call (Name and telephone number)

I. Request approved by:
Signature: B. Quinn
B. Quinn, Acting Chief
Title: Plant Division

PART II. TO BE COMPLETED BY PERSONNEL OFFICE (Items inside heavy lines in Part I above also to be completed)

13. VETERAN PREFERENCE

No.	5-pt.	10-pt. Disab.	10-pt. Other
		X	

14. TENURE GROUP: IA

15. POSITION TO BE OCCUPIED IS IN THE: X Competitive Service; Excepted Service

16. APPROPRIATION
From
To

17. PAYROLL DEDUCTIONS

CSR	FICA	FEGLI
X		X

J. Position Classification Action

New	Vice	I. A.	Regr.

K. CLEARANCES

	Initials or Signature	Date
(1)		
(2) CEIL. OR POS. CONTROL		
(3) CLASSIFICATION	M. L. Spigge	10/24/61
(4) PLACEMENT OR EMPL.	A. Hom	10/6/61
(5)		
(6) APPROVED BY:		

(7) Remarks: (Note: Use item 19 on reverse for Standard Form 50 remarks)
Qualification Standard: 2810 to payroll

PART III. TO BE COMPLETED BY EMPLOYEE

RESIGNATION (IMPORTANT—NOTE TO EMPLOYEE: Give specific reasons for your resignation. Avoid generalized reasons, such as, "ill health," personal reason.")

I RESIGN FOR THE FOLLOWING REASONS:

Oct 5 1961
(DATE RESIGNATION IS WRITTEN)

I go outside to advance myself for a better position.

OCT 6 11 AM
PERSONNEL DIVISION

The effective date of my resignation will be Oct 27-1961

Gloria M Goodman
(SIGNATURE)

PART IV. SEPARATION DATA

FORWARD COMMUNICATIONS, INCLUDING SALARY CHECKS AND BONDS, TO THE FOLLOWING ADDRESS:

(Street) (City) (Zone) (State)

PART I. (Continued)

Remarks by Requesting Office:

(1) Unsuitability for employment in the National Bureau of Standards as evidenced by repeated use of intoxicating beverages to excess.
(2) Intentional deception in obtaining your appointment.
(3) Conduct unbecoming a Government employee.
(4) Intentional false and misleading statements on an official document.

PART II. (Continued)

STANDARD FORM 50 REMARKS

Subject to completion of 1 year probationary (or trial) period commencing

Service counting toward career (or permanent) tenure from:

Successor position—employee retained in the competitive service.

Entrance performance rating satisfactory

Actions: Show reasons below, as required. Check, if applicable: ☐ During probation ☐ From appointment of 6 months or less

U. S. GOVERNMENT PRINTING OFFICE : 1957 O-F—437584

23

37

78,113

Standard Form 51—6 Part
Rev. July 1957
Promulgated by U. S. Civil Service Commission—FPM-R-1

NOTIFICATION OF PERSONNEL ACTION

50-106-04

1. NAME (LAST [CAPS]—First—Middle—Mr.—Miss—Mrs.)	2. DATE OF BIRTH	3. IDENTIFICATION (optional)
GODWIN, Glynn H.(Mr.) #22590	7-2-25	NBS 16

4. THIS IS AN OFFICIAL NOTICE OF THE PERSONNEL ACTION DESCRIBED BELOW, WHICH AFFECTS YOUR EMPLOYMENT. GENERAL INFORMATION CONCERNING YOUR EMPLOYMENT APPEARS ON THE REVERSE SIDE OF THIS FORM.

5. NATURE OF ACTION (standard terminology must be used)	6. EFFECTIVE DATE OF ACTION	7. CIVIL SERVICE OR OTHER LEGAL AUTHORITY
Resignation (Career)	Close of Business 10-27-61	

FROM—	8. POSITION TITLE AND NUMBER	TO—
Electrician (L-160)		
WB-2805-9 $2.79 p.h. (3rd Step)	9. SERIES, GRADE, SALARY	
National Bureau of Standards 50. Plant 2. Electric Shop Washington,D.C.	10. NAME AND LOCATION OF OFFICE BY WHICH EMPLOYED	
	11. DUTY STATION	

1961 OCT 31 AM 10 09
OFFICE OF INVESTIGATIONS SECURITY

[ ] Yes	12. APPORTIONED POSITION	[ ] Yes STATE: Maryland [ ] Apportionment Waived [ ] Proved

13. VETERAN PREFERENCE				14. TENURE GROUP	15. POSITION OCCUPIED IS IN THE:			
No	5-pt.	10-pt. Disab.	10-pt. Other		[X] Competitive Service		[ ] Excepted Service	
		X		I-A				

16. APPROPRIATION	17. PAYROLL DEDUCTIONS			18. DATE OF APPOINTMENT AFFIDAVITS (occasions only)
From: To:	CSR	FICA	FEGLI	
	X		X	

19. REMARKS:

[ ] a. Subject to completion of 1 year probationary (or trial) period commencing _____

[ ] b. Service counting toward career (or permanent) tenure from: _____

Separations: Show reasons below, as required. Check, if applicable: [ ] c. During probation [ ] d. From appointment of 6 months or less

Reason: "To go outside to advance myself for a better position."
Address: 3404 Taylor Street
Brentwood, Maryland.
Any accumulated and accrued leave to be paid in a lump sum.
Resigned while action pending to be separated for:
(1) Unsuitability for employment in the National Bureau of Standards as evidenced by repeated use of intoxicating beverages to excess.
(2) Intentional deception in obtaining your appointment.
(3) Conduct unbecoming a Government employee.
(4) Intentional false and misleading statements on an official document.

Security Control Officer of the Department of Commerce has been requested to return the investigative file on this individual to the Investigations Division of the Civil Service Commission, Washington, D. C.

Social Security No. 250-03-0267

20. EMPLOYING DEPARTMENT OR AGENCY	22. SIGNATURE (or other authentication) AND TITLE
DEPARTMENT OF COMMERCE	S/ George R. Porter, Personnel Officer
21. OFFICE MAINTAINING OFFICIAL PERSONNEL FOLDER (If different than Item 10, above) National Bureau of Standards Washington,D.C.	23. DATE: 10-24-61

6. UTILITY COPY

Govt's EXHIBIT NO. 2

Standard Form 50— -(6 PART)
Rev. July 1957
Promulgated by U.S. Civil Service Commission—FPM-R-1

NOTIFICATION OF PERSONNEL ACTION

1. NAME (LAST [CAPS]—First—Middle—Mr.—Miss—Mrs.)	2. DATE OF BIRTH	3. IDENTIFICATION (Optional)
GOODMAN, Glyn Harp (Mr.)	7-2-25	HBS 3

4. THIS IS AN OFFICIAL NOTICE OF THE PERSONNEL ACTION DESCRIBED BELOW, WHICH AFFECTS YOUR EMPLOYMENT. GENERAL INFORMATION CONCERNING YOUR EMPLOYMENT APPEARS ON THE REVERSE SIDE OF THIS FORM.

5. NATURE OF ACTION (Standard Terminology Must be Used)	6. EFFECTIVE DATE OF ACTION	7. CIVIL SERVICE OR OTHER LEGAL AUTHORITY
Transfer (Career-Conditional) - Correction	9-21-53	C. S. Reg. 2.501

FROM—		TO—
Elevator Repairer's Helper	8. POSITION TITLE AND NUMBER	Electrician (R-616.1)
WB-5 $1.96 ph (2nd step)	9. SERIES, GRADE, SALARY	WS-2805-8 $2.12 ph (2nd step)
General Services Administration Washington, D. C.	10. NAME AND LOCATION OF OFFICE BY WHICH EMPLOYED	National Bureau of Standards 50. Plant Division 2. Electric Shop Washington, D. C.
	11. DUTY STATION	

☐ Yes	12. APPORTIONED POSITION	☐ Yes STATE: Maryland	☐ Apportionment Waived ☐ Proved

13. VETERAN PREFERENCE				14. TENURE GROUP	15. POSITION OCCUPIED IS IN THE:	
No.	5-pt.	10-pt. Disab.	10-pt. Other			
		X		II-A	X Competitive Service	☐ Excepted Service

16. APPROPRIATION	17. PAYROLL DEDUCTIONS			18. DATE OF APPOINTMENT AFFIDAVITS (accessions only)
From:	CSR	FICA	FEGLI	
To:	X		X	

19. REMARKS:

☒ a. Subject to completion of 1 year probationary (or trial) period commencing 11-5-57

☒ b. Service counting toward career (or permanent) tenure from: 11-5-57

Separations: Show reasons below, as required. Check, if applicable: ☐ c. During probation ☐ d. From appointment of 6 months or less

Acquired status by Conversion to Career-Conditional Appointment 1-27-58 with G.S.A.
Subject to satisfactory medical and chest x'ray, if required.
E. O. 10450 Sec 3 (a) completed 12-27-57.
Subject to satisfactory report of investigation as to suitability for employment.
Service Computation Date: 9-1-54.

This action corrects Item 13 on SF 50 dated 9-15-58 and 1-9-59 to show 10 pt. disab. prof., previously shown as 5 pt.

noted on SF

20. EMPLOYING DEPARTMENT OR AGENCY	22. SIGNATURE (or Other Authentication) AND TITLE
DEPARTMENT OF COMMERCE	S/George R. Porter, Personnel Officer
21. OFFICE MAINTAINING OFFICIAL PERSONNEL FOLDER (if different than item 10, above)	23. DATE: 1-30-59
22690 National Bureau of Standards Washington 25, D. C.	

4. Personnel Folder Copy

☆ U. S. GOVERNMENT PRINTING OFFICE: 1956—J-477053

3

Filed March 18, 1965

November 16, 1961

Gentlemen:

I have been retained by Glynn H. Goodman, who, on October 4th, 1961 was handed a statement of charges which indicated that he had the choice of refuting those charges or resigning under a cloud.

Mr. Goodman, without advice of counsel, but by subtle pressure placed on him by superiors at the Bureau of Standards, was forced into resigning his position effective at the end of business on October 27, 1961.

Mr. Goodman insists that as a 10 point veteran and appointed from the competitive list he has been abused and ill-advised concerning his rights and is therefore forced to resort to this course of seeking relief.

When Mr. Goodman realized that he had been duped into resigning, he advised that he desired to rescind the resignation, but the Bureau chose to refuse to accept his recision.

It is his desire that Civil Service hear this entire case and that it decide that the method employed in securing his resignation was not in accordance with good practice and was not secured in good faith and that he be allowed to resume his work at the Bureau at the earliest possible date.

May this letter serve as his official notice of appeal from the action taken by the Bureau?

Yours very truly,

I. William Stempil
Counsel for Glynn H. Goodman

Filed March 18, 1965

Dear Mr. Stempil:

This is in reply to your letter of November 16, 1961 in behalf of Mr. Glynn H. Goodman, Electrician, Bureau of Standards, Department of Commerce who resigned his position effective on October 27, 1961.

A resignation is a voluntary termination of one's services to his employer. Neither the law nor the Commission's regulations provide a right of appeal to the Commission to Federal employees whose services are terminated by resignation.

You indicate that the agency offered Mr. Goodman the choice of refuting charges preferred against him in letter dated October 4, 1961 or resigning under a cloud.

Mr. Goodman elected to resign rather than have the agency pursue the removal proceeding which it had initiated against him.

In so doing Mr. Goodman cut off any right of appeal he may have had in event the agency separated him for cause.

Under the circumstances we cannot accept your appeal in behalf of Mr. Goodman.

Sincerely yours,

S. L. Elliott, Chief
Appeals Examining Office

Filed March 18, 1965

October 18, 1961

Dear Dr. Astin:

The files of Glynn H. Goodman will reveal that on October 4, 1961, George R. Porter, Personnel Officer at the Bureau of Standards caused to be handed to Mr. Goodman a letter indicating that Mr. Porter intended to remove Mr. Goodman from the rolls of the

Bureau as a person unfit for service on various charges as indicated in that letter.

When Mr. Goodman sought assistance and counsel he claims he received none other than a strong suggestion to resign as quickly as possible, and as Mr. Goodman relates the matter to me, he did resign on October 5, 1961 under pressure and without advice of counsel.

It seems that all of this turmoil began when Mr. Goodman claims he was passed over for a better job paying more money and when he attempted to complain and investigate the reason for the so-called "brush-off"— this latest incident resulted.

Mr. Porter's letter to me dated October 17, 1961 indicates that the Bureau of Standards declines to grant Mr. Goodman's desire to rescind the resignation which was forced upon him.

My question at the moment is, - Since when does the Bureau of Standards act so quickly in matters of this sort without giving the employee, a ten-point veteran, an opportunity to be heard? I can only conclude that Mr. Porter has created this situation and intends to carry it through himself come h--- or high water! Am I right or wrong?

Yours very truly,

I. William Stempil

Filed May 17, 1965

AMENDED COMPLAINT FOR DECLARATORY AND MANDATORY INJUNCTION ORDERING THE SECRETARY OF COMMERCE TO REINSTATE PLAINTIFF IN HIS POSITION AS ELECTRICIAN, WB-9, $2.79 PER HOUR IN THE NATIONAL BUREAU OF STANDARDS AND FOR BACK PAY

Plaintiff amends his complaint and represents to this Honorable Court as follows:

1. This is an action in equity wherein the matter in controversy exceeds the value of Ten Thousand ($10,000) Dollars exclusive of interest and costs, and arises, in the District of Columbia under the laws of the United States.

2. Plaintiff, Glynn H. Goodman, is a citizen of the United States and a resident of Maryland. He entered the General Services Administration as an elevator repairer's helper WB-5, on November 5, 1957; he was appointed an electrician WB-9, $2.79 per hour, in the National Bureau of Standards on September 21, 1958. Since the date of appointment in the classified competitive service as an electrician, he has served continuously until October 27, 1961, when he was illegally, arbitrarily and capriciously separated from his employment while holding a permanent position as electrician, WB-9, $2.79 per hour, in the National Bureau of Standards, Department of Commerce.

3. That Plaintiff was partially disabled in World War II and is a ten-point Veterans Preference Eligible who comes within the purview of the Veterans Preference Act 5 U. S. C. 851 et seq.

4. The United States of America as a Defendant; Defendant John T. Connor is Secretary of Commerce of the United States of America, and Plaintiff's highest supervisory officer; Allen V. Astin is Director of the National Bureau of Standards and Plaintiff's supervisory officer; John W. Macy, Jr. is Chairman and Defendants Robert E. Hampton and Ludwig J. Andolsek are Commissioners of the United States Civil Service Commission, all of whom officially reside in the District of Columbia.

5. He requested a pay raise many times, while employed in the National Bureau of Standards. These requests irritated his superiors.

6. On October 4, 1961, he was called into the office of Brent M. Quinn, Assistant Chief, Plant Division, National Bureau of Standards, where he was handed a Notice of Removal, dated the same day, which was unsigned. A. S. Coiner, of the Personnel Office, said that the National Bureau of Standards had evidence against him which was in the safe. This was not shown him. He requested permission to take the Notice of Proposed Removal home with him, which was refused. The said A. S. Coiner stated, "If you resign, it will not go on your record," as he placed a filled-in resignation on the table in front of Goodman, which the latter saw for the first time.

7. On October 5, 1961, he went to the Office of George B. Porter, Personnel Officer, National Bureau of Standards. He was sick with a painful and injured hand, and was nervous and upset. He had been under a physician's care for a long time.

"When do you want to resign?" said George B. Porter.

"I don't know," said Mr. Goodman.

"How about the 27th?" said Porter.

8. The said Glynn H. Goodman was deceived by the fraud, deception, and misrepresentation of the said George B. Porter, and A. S. Coiner of the Personnel Division of the National Bureau of Standards, and without the advice of counsel and without discussing the matter with his wife, and being sick, nervous, and upset, he signed the form resignation, and put in the date at the suggestion of the said George B. Porter, resigning his livelihood as Electrician WB-9.

9. On October 16, 1961, he sent a telegram to the National Bureau of Standards withdrawing his resignation.

10. On October 17, 1961, George B. Porter, Personnel Officer, National Bureau of Standards, wrote I. William Stempil, Attorney at Law, who represented Glynn H. Goodman, that the Bureau of Standards declines to grant consent to the withdrawal of the resignation.

11. On October 18, 1961, I. William Stempil, Attorney at Law, for Glynn H. Goodman, wrote Dr. Allen V. Astin, Director, National Bureau of Standards, saying in part:

> "Since when does the Bureau of Standards act so quickly in matters of this sort without giving the employee, a ten point preference, an opportunity to be heard? I can only conclude that Mr. Porter has created this situation and intends to carry it through himself come h... or high water."

12. On October 26, 1961, Robert S. Walleigh, Associate Director, National Bureau of Standards wrote I. William Stempil, denying that pressure was put on Mr. Goodman to resign.

13. On November 16, 1961, I. William Stempil wrote the U. S. Civil Service Commission the decision of Robert S. Walleigh, Associate Director, National Bureau of Standards, of October 26, 1961.

14. On November 29, 1961, S. L. Elliott, Chief, Appeals Examining Office, wrote I. William Stempil, Attorney for Mr. Goodman, saying that a resignation is voluntary and that his was not a separation for cause and therefore the appeal is denied.

15. I. William Stempil, Esquire, passed away and Glynn H. Goodman obtained the file in February, 1964.

16. On April 13, 1964, Donald H. Dalton, Attorney for Plaintiff, wrote Edgar T. Groark, Chairman, Board of Appeals and Review, U. S. Civil Service Commission, appealing the forced resignation of October 5, 1961.

17. On September 15, 1964, Edgar T. Groark, Chairman, Board of Appeals and Review, U. S. Civil Service Commission wrote Plaintiff's attorney stating that the resignation was effective October 5, 1961, and affirming the decision of the Appeals Examining Office in not accepting the appeal.

18. Plaintiff alleges that the action of the Civil Service Commission in denying him an appeal is arbitrary, capricious, illegal and is such action that will not promote the efficiency of the service and is

not in accordance with law; and is in excess of statutory jurisdiction; and without observance of procedure required by law.

19. Plaintiff alleges that the actions of the Civil Service Commission and the Department of Commerce and the National Bureau of Standards in removing him from his position is not within the purview of Section 14 of the Veterans Preference Act of 1944, as amended, was arbitrary and capricious and illegal and not in accordance with law; was in excess of statutory jurisdiction; without observance of procedures required by law.

20. The Plaintiff seeks a declaratory and mandatory injunction under the provisions of 5 U.S.C., Section 863 (the Veterans Preference Act, as amended, Section 14); 28 U.S.C. Sections 2201-2202 (the Declaratory Judgment Act); 5 U.S.C. Sections 1001-1009 (the Administrative Procedure Act); 5 U.S.C. Section 652 (a) (the Lloyd-La Follette Act of 1912, as amended); 5 C.F.R., 9.201, 9.301-9.307; and other federal laws and regulations.

21. Plaintiff alleges that the action of the U. S. Civil Service Commission in holding that Plaintiff's resignation was voluntary and that it was not revoked, and in denying him an oral hearing is arbitrary, capricious, and illegal, and is such action that will not promote the efficiency of the service and is not in accordance with law; and in excess of statutory jurisdiction; and without observance of procedure required by law.

22. Plaintiff alleges that the actions of the Department of Commerce and the National Bureau of Standards in separating him, in denying him an oral hearing, in holding that the Plaintiff's resignation was voluntary, and in refusing to revoke his resignation, is arbitrary, capricious and illegal; and is such action that will not promote the efficiency of the service and is not in accordance with law; and is in excess of statutory jurisdiction; and without observance of procedure required by law.

WHEREFORE, the Plaintiff prays that this Honorable Court will:

1. Take jurisdiction of the case.

2. Issue a declaratory judgment, declaring that Plaintiff's resignation is void, unlawful, and of no effect and that Plaintiff was never legally separated from his position in the National Bureau of Standards of the Department of Commerce.

3. Issue a mandatory injunction, ordering and directing the said Defendants as are officials of the Department of Commerce to restore Plaintiff to his proper position in the National Bureau of Standards of the Department of Commerce, as of the date of his illegal and unlawful removal, together with all rights, benefits, and privileges that would or might accrue from a continuity of service from the date of such illegal and unlawful discharge of the date of judgment.

4. And for such other or further relief that may to the Court seem meet and proper.

Glynn H. Goodman

Filed January 7, 1965

ANSWER

First Defense

The complaint fails to state a claim upon which relief may be granted.

Second Defense

Plaintiff's claim is barred under the doctrine of laches.

Third Defense

Specifically answering the numbered paragraphs of the complaint, defendants aver as follows:

1. They are not required to answer the jurisdictional allegations of paragraph 1.

2. They admit the allegations of paragraph 2, except that they deny that plaintiff was illegally, arbitrarily and capriciously separated from his employment.

3.4. They admit that plaintiff is entitled to preference under the Veterans Preference Act, 5 U.S.C. 851 et seq., and they admit the allegations of paragraph 4.

5. They contend that the allegations of paragraph 5 are irrelevant, but insofar as answer may be required, they admit the allegations of sentence 1 and deny those of sentence 2.

6.7. They deny the allegations of paragraphs 6 and 7, except insofar as said allegations may be consistent with the administrative record which will be filed herein.

8. They deny the allegations of paragraph 8.

9.10. They admit the allegations of paragraphs 9 and 10.

11. They admit that plaintiff's counsel wrote to Dr. Astin, and aver that they will furnish the Court with a certified copy of said letter which will accurately reflect the entire contents thereof.

12. They admit the allegations of paragraph 12.

13.14. They admit that plaintiff appealed to the Civil Service Commission and that the Appeals Examining Office thereof declined to entertain the appeal.

15. They are without information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 15.

16.17. They admit that plaintiff's counsel on April 19, 1964 wrote to the Board of Appeals and Review, Civil Service Commission, and that said Board declined to review plaintiff's resignation but they deny that plaintiff's resignation was forced.

18.19. They deny the allegations of paragraphs 18 and 19.

20. They are not required to answer the conclusions of law of paragraph 20 but aver that the statute and regulations upon which plaintiff relies are not applicable herein.

21.22. They deny the allegations of paragraphs 21 and 22.

Defendants deny all allegations not otherwise specifically answered herein, except that they admit those allegations which are consistent with the administrative record which will be filed in this cause.

Filed March 18, 1965

MOTION FOR SUMMARY JUDGMENT

Defendants through their attorney, the United States Attorney for the District of Columbia, respectfully move the Court to grant judgment for them on the ground that the pleadings and the certified copies of records and regulations of the Civil Service Commission and the Department of Commerce relevant to plaintiff's claim, marked Government Exhibits A, B, C and D, which are attached hereto and made a part hereof by reference, disclose that there is no genuine issue as to any material fact and that defendants are entitled to judgment as a matter of law.

Filed March 18, 1965

STATEMENT OF MATERIAL FACTS PURSUANT TO LOCAL RULE 9(h)

The material facts involved in this cause are set forth in the certified copies of administrative records and affidavit concerning plaintiff which are filed herein, and they may be summarized for purposes of this motion as follows:

1. From September, 1958 to October, 1961 plaintiff was employed as an electrician at the National Bureau of Standards, Department of Commerce (hereinafter referred to as "the Bureau").

2. In May, 1961 the Bureau initiated proceedings to secure secret security clearance for plaintiff which would permit him to enter and work in restricted areas and thereby enable the Bureau fully to utilize his services as an electrician. (Memo of Coiner, Comm. rec.)

3. The investigation incident to the aforementioned security clearance proceedings developed adverse information concerning plaintiff of such a nature that the Bureau determined that his removal from his position appeared warranted. On October 2, 1961 the personnel officer prepared a letter of charges proposing such removal but left it undated and unsigned. A meeting was arranged by Bureau officials to discuss the proposed action with plaintiff. (Memo of Coiner, Comm. rec.)

4. At the meeting, plaintiff read the letter of charges and was told by Mr. Coiner of the Personnel Office of the Bureau that the reason it was undated and unsigned was to give him an opportunity to resign and thereby prevent the charges from becoming a part of his official record; that he was not being asked to resign; that the Bureau could not ask him to resign; that if plaintiff did not elect to resign, the letter of charges would be dated, signed and delivered to him; that once the letter was dated, signed and delivered it would become a part of his official record. Plaintiff being unable to decide whether to resign or to accept the letter of charges, requested an opportunity

to discuss the matter with Mr. Porter, Personnel Officer. (Memo of Coiner, Comm. rec.; Goodman affidavit, CSC rec.)

5. After talking to Mr. Porter, plaintiff stated that he wished to accept the letter of charges. Mr. Porter then dated and signed the letter and handed it to plaintiff who acknowledged receipt thereof on October 4, 1961. (Memo of Coiner, Comm. rec.; p. 25, 33, CSC rec.)

6. On October 5, 1961, plaintiff went to Mr. Porter's office and stated that after thinking the matter over he had decided to resign. Mr. Coiner furnished him with a standard form 52, request for personnel action. Plaintiff wrote on the form the reason for his resignation, the effective date thereof and signed it. (Memo of Coiner, Comm. rec.; p. 22-23, CSC rec.; and Goodman affidavit)

7. The Bureau accepted plaintiff's resignation on October 5, 1961.

8. On October 16, 1961, plaintiff, by a telegram addressed to Mr. Porter, stated that he intended to defend himself against the letter of charges; that he had retained an attorney for that purpose and that he was recalling and rescinding his resignation because it was coerced.

9. Mr. Porter, by letter, advised plaintiff's counsel that a resignation is binding on an employee once he has submitted it, and may not be withdrawn thereafter except with the consent of the agency. The Bureau declined, for reasons set forth in letters dated October 17

and 26, 1961 to plaintiff's counsel, to grant consent to the withdrawal of the resignation. (p. 26, 24, CSC rec.)

10. Plaintiff appealed to the United States Civil Service Commission (hereafter referred to as "the Commission") by letter of his counsel dated November 16, 1961.

11. The Appeals Examining Office of the Commission, by letter of November 29, 1961, advised plaintiff's counsel that plaintiff elected to resign rather than have the agency pursue the removal proceeding which it had initiated against him and in so doing he had cut off any right of appeal he might have had. Under the circumstances, it declined to accept plaintiff's appeal.

12. In April, 1964 plaintiff appealed to the Board of Appeals and Review of the Commission from the 1961 decision of the Appeals Examining Office.

13. The Board of Appeals and Review, by letter of September 15, 1964, affirmed the decision of the Appeals Examining Office not to accept the appeal.

14. Plaintiff instituted this action in November, 1964.

Filed May 7, 1965

OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT.

Plaintiff by counsel opposes Defendant's motion for summary judgment and moves the court for summary judgment in his favor against Defendants on the ground that there is no genuine issue as to material fact and that Plaintiff is entitled to judgment as a matter of law.

Donald H. Dalton

Filed May 7, 1965

PLAINTIFF'S STATEMENT OF MATERIAL FACTS PURSUANT TO LOCAL RULE 9 (h)

The Plaintiff contends that there is no genuine issue to the following material facts:

1. Plaintiff was partially disabled in World War II and is a ten-point Veterans Preference Eligible.

2. Plaintiff was appointed an electrician, WB-9, $2.79 per hour in the National Bureau of Standards on September 21, 1958.

3. He had Classified Competitive status when he was removed from his position as electrician, WB-9, $2.79 per hour in the National Bureau of Standards on October 27, 1961.

4. He requested a pay raise many times of his superiors, while employed in the National Bureau of Standards (Complaint, Pl. Affidavit), and this annoyed them.

5. On October 4, 1961, he was called into the office of Brent M. Quinn, Assistant Chief, Plant Division, National Bureau of Standards in Room 1, Sterrett House, where he was handed a Notice of Removal, dated the same day, and unsigned; that A. S. Coiner of the Bureau's Personnel Office was present and that the said Coiner laid a resignation on the table which Plaintiff saw for the first time (Complaint, Pl.'s Affidavit, Quinn's Affidavit).

"Of course, we can't tell you to resign, but if you do not, removal proceedings will go ahead", said A. S. Coiner.

"Also, if you do resign, your record will be clear and the charges will be dropped. You can come back to work in a year's time", said Coiner. (Complaint, Affidavit, Quinn's Affidavit).

6. On October 5, 1961, he went to the office of George B. Porter, Personnel Officer, National Bureau of Standards. He was sick with a painful hand and was nervous and upset.

"When do you want to resign?" said George B. Porter.

"I don't know", said Mr. Goodman.

"How about the 27th?" said Porter.

7. Without the advice of counsel and without discussing the matter with his wife, and being sick, nervous and upset, he signed the form resignation on October 5, 1961, and placed in the effective date of October 27, 1961, at the suggestion of George B. Porter,

resigning from his livelihood. (Complaint, Pl.'s Affidavit)

8. On October 17, 1961, he sent a telegram to the National Bureau of Standards, withdrawing the said resignation.

9. On October 17, 1961, George B. Porter, Personnel Officer, National Bureau of Standards, wrote I. William Stempel, Attorney at Law, who represented Plaintiff that the Bureau declines to accept the withdrawal of the resignation.

10. On October 18, 1961, I. William Stempil, Attorney at Law, for Glynn H. Goodman, wrote Dr. Allen V. Astin, Director, National Bureau of Standards, saying in part:

> "Since when does the Bureau of Standards act so quickly in matters of this sort without giving the employee, a ten point preference, an opportunity to be heard? I can only conclude that Mr. Porter has created this situation and intends to carry it through himself come h... or high water."

11. On October 26, 1961, Robert S. Walleigh, Associate Director, National Bureau of Standards wrote I. William Stempil, denying that pressure was put on Mr. Goodman to resign.

12. On November 16, 1961, I. William Stempil, wrote the U. S. Civil Service Commission the decision of Robert S. Walleigh, Associate Director, National Bureau of Standards, of October 26, 1961.

13. On November 29, 1961, S. L. Elliott, Chief, Appeals Examining Office, wrote I. William Stempil, attorney for Mr. Good-

man, saying that a resignation is voluntary and his was not a separation for cause and therefore the appeal is denied.

14. I. William Stempil, Esquire, passed away and Glynn H. Goodman obtained the file in February, 1964.

15. On April 13, 1964, Donald H. Dalton, attorney for Plaintiff, wrote Edgar T. Groark, Chairman, Board of Appeals and Review, U. S. Civil Service Commission, appealing the forced resignation of October 5, 1961.

16. On September 15, 1964, Edgar T. Groark, Chairman, Board of Appeals and Review, U. S. Civil Service Commission, wrote Plaintiff's attorney stating that the resignation was effective October 5, 1961, and affirming the decision of the Appeals Examining Office in not accepting the appeal.

17. Plaintiff filed this action on November 6, 1964.

Donald H. Dalton

Filed May 7, 1965

STATEMENT OF GENUINE ISSUES
PURSUANT TO LOCAL RULE 9 (h)

1. That Plaintiff's resignation was involuntary.

2. That Plaintiff's resignation was withdrawn and revoked before it was accepted.

3. That the filling in of the blanks in the Form 52 resignation constitutes fraud, deception and misrepresentation.

4. The Defense of Laches is without merit.

Donald H. Dalton

Filed May 7, 1965

AFFIDAVIT

I, Brent M. Quinn, on oath depose and say that I personally know Glynn H. Goodman approximately six years; that I was assistant chief, Plant Division, National Bureau of Standards, Department of Commerce when the said Glynn H. Goodman was employed there;

Approximately in the early part of October, 1961, Mr. A. S. Coiner of the Personnel Office, National Bureau of Standards, informed me that the officials of the Department of Commerce had derogatory information about Mr. Goodman and that he was an undesirable employee and should be removed.

I asked Mr. Hylton Graham, chief of the Plant Division about the matter, but he did not discuss the issue.

The above said A. S. Coiner informed me that Mr. Graham was of the opinion that Mr. Goodman should be removed.

On October 4, 1961, the said Glynn H. Goodman came into my office, Room 1, Sterret House, National Bureau of Standards. Mr.

A. S. Coiner was present, with a resignation already prepared for Mr. Goodman's signature, which Mr. Goodman did not know about at that time. The resignation was placed on the table before Mr. Goodman to see.

"Of course we can't tell you to resign, but if you do not, removal proceedings will go ahead," said A. S. Coiner. "Also, if you do resign, your record will be clear and the charges will be dropped. You can come back to work in a year's time."

A discussion arose as to whether Mr. Goodman could come back to work after a bar of one year. Mr. Coiner stated that Goodman could come back after a year.

In my opinion, under the circumstances, Glynn H. Goodman was forced to resign from his position as Electrician in the National Bureau of Standards.

Brent M. Quinn

Filed May 7, 1965

AFFIDAVIT

District of Columbia, ss: May 6, 1965

City of Washington

Glynn H. Goodman, being first duly sworn on oath, deposes and says that he was employed as an electrician, WB-9, $2.79 per hour in the National Bureau of Standards, Department of Commerce, in

October, 1961; that on October 5, 1961, he was sick, nervous and upset and under a physician's care when he went into the office of George B. Porter, Bureau of Standards Personnel Officer; that the said George B. Porter had signed the letter of proposed removal, and also advised him to resign; that the Form 52, which he signed on October 5, 1961, was blank when it was presented to him and he only wrote the following and was only cognizant of the following:

"October 5, 1961

"To go outside to advance myself for a better position.

"October 27, 1961

Glynn H. Goodman".

All the other writing and typewriting, except printing, was placed there by the Department of Commerce, without his knowledge and consent and outside of his presence; it was placed there after he had signed the resignation.

The form resignation that he signed was the design, will and intent of the officials of the National Bureau of Standards - it was not a voluntary act on his part and not of his own free will and it was dictated by A. S. Coiner and George B. Porter of the National Bureau of Standards, Department of Commerce.

A. S. Coiner of the Personnel Office of the National Bureau of Standards assured him that if he signed the resignation, his record would be clear; however, the Form 52 shows derogatory matter in the Letter of Charges against him.

That in October, 1961, he retained I. William Stempil, a District of Columbia lawyer, to represent him in the personnel action. Mr. Stempil passed away and he did not obtain the file from Mr. Stempil's effects until February 1964; that he tried many times to obtain the file but was unsuccessful; that he is not a lawyer, but an electrician and did not know what to do to determine the status of the case without the late attorney's file; that the delay was unavoidable on his part.

Glynn H. Goodman

Subscribed and sworn to before me, a Notary Public, this 6th day of May, 1965.

Filed March 18, 1965

TO : File of Glynn H. Goodman DATE: October 17, 1961

FROM : A. S. Coiner, Personnel
Management Specialist
Personnel Division
National Bureau of Standards

SUBJECT : Citation of circumstances surrounding the submission of resignation of subject employee.

On Wednesday, October 4, 1961, Mr. George R. Porter, Personnel Officer, in his office and in my presence, personally handed to Mr. Glynn H. Goodman a letter of charges of that date, showing

specifically and in detail why it was proposed to remove him from his position. On the next day, Thursday, October 5, 1961, Mr. Goodman voluntarily came to Mr. Porter's office and also in my presence submitted, in writing, a formal resignation, to become effective at the close of business on October 27, 1961.

On October 16, 1961, Mr. Porter received a telegram from Mr. Goodman stating that he intended to defend himself against the charges preferred against him in Mr. Porter's letter of October 4, 1961; that he had retained Attorney I. William Stempil to defend him; and alleged that he had been coerced into resigning and demanded that he be permitted to recall his resignation.

In view of Mr. Goodman's entirely false claim that coercion had been used to secure his resignation, I feel it incumbent upon me to place in Mr. Goodman's personnel file, information which will completely refute his allegation. The facts preceding the submission of Mr. Goodman's resignation on October 5, 1961 follow:

In order to fully utilize Mr. Goodman's services as an Electrician, it became necessary to secure Secret security clearance for him, so that he could enter and work in restricted areas of the Bureau. Accordingly, on or about May 3, 1961, certain forms were filled out by both the Bureau and Mr. Goodman and sent to the Director, Investigations and Security, Department of Commerce, for processing. The following investigation developed serious adverse information, which was furnished to the Bureau "for appropriate

action" by the above mentioned Security officer on June 19, 1961. The adverse information was of such a nature it was felt that, in the interests of the Bureau, Mr. Goodman's removal from his position appeared to be warranted. Accordingly, on or about Monday, October 2, 1961, Mr. Porter, the Personnel Officer, prepared a letter of charges, specifically and in detail, proposing such removal but left it undated and unsigned. The reason for not dating and signing the letter was to give Mr. Goodman a chance to resign -- if he so elected -- and thereby prevent the charges from becoming a part of his official record. In order to determine Mr. Goodman's wishes in the matter, I requested the Acting Chief, Plant Division, to set up a meeting in his office with Mr. Goodman and myself, so that I could discuss the proposed action with him. On or about 9:00 a.m. on Tuesday morning, October 3, 1961, I reported to the office of Mr. Quinn, the Acting Chief of the Plant Division, and in his presence, and in the presence of Mr. Taylor, the Administrative Officer, and Mr. Augustyn, the Electric Shop Acting Foreman, I discussed the proposed action with Mr. Goodman. Knowing all of the individuals present quite intimately, including Mr. Goodman, we met in a very friendly atmosphere. With a background of over thirty years of personnel work, during which I have had to handle many cases of this type, I was extremely careful to avoid the appearance of exerting any pressure whatsoever to cause Mr. Goodman to make a decision with which he was not fully in accord. I opened the conversation

with Mr. Goodman by telling him that I was sorry that it was my duty to discuss with him a very serious matter concerning his position in the Bureau; that serious derogatory information had come to light through the investigation made in connection with our attempt to secure Secret security clearance for him; and that the Bureau considered this information serious enough to propose his removal from his position. I told him that I had in my hand an undated, unsigned letter in which charges were listed specifically and in detail; and that I wanted him to read it carefully, taking as much time as he needed. I told him the reason for not dating and signing the letter was to give him an opportunity to resign and thereby prevent the charges from becoming a part of his official record. I told him that I wanted him to clearly understand that we were not asking for his resignation; that we could not do so; that we could suggest that an employee consider such an action -- if we thought it might be in his own best interests. I told him that if he did not elect to resign, the letter of charges would be dated, signed and delivered to him; that he would have ten days in which to answer the charges, and that he would have appeal rights under Section 14 of the Veterans Preference Act, etc., if our final decision was to remove him. I also told him that if he elected to receive the letter of charges, and it was officially delivered to him, it would become a part of his personnel record; and that if he elected to resign after that, our records would have to show that he

resigned while the stated charges were pending. Mr. Goodman asked certain questions which indicated he clearly understood the situation and the purpose of my visit. After reading and re-reading the letter several times, Mr. Goodman made some comments concerning his numerous arrests for being drunk and disorderly, etc. He finally said that he couldn't make up his mind as to whether he should resign or take the letter of charges; that he would like to talk to Mr. Porter, the Personnel Officer. I said that Mr. Porter would be glad to discuss the matter with him, and suggested that he think the thing over for the rest of the day and come to Mr. Porter's office at 8:30 a.m. the next day, Wednesday, October 4, 1961. He agreed, and the interview ended. On the next day, as agreed, Mr. Goodman came to Mr. Porter's office. As Mr. Porter was not in, I greeted Mr. Goodman and sat in Mr. Porter's office with him for about an hour, awaiting Mr. Porter's arrival. During this time, we had a very friendly discussion of the entire case; Mr. Goodman made many comments concerning the charges contained in the letter -- such as "rookie cops arresting him, trying to make a name for themselves;" "judges railroading him in court;" "and his lawyer letting him down;' that "you didn't stand a chance if arrested in Montgomery County," etc. I listened to him attentively and agreed that "people can receive rough treatment sometimes," etc. I asked him if he had any idea "at this time" as to whether he would resign or take the letter of charges. I again carefully explained to him that if he decided to take

the letter of charges, he would have appeal rights provided by Section 14 of the Veterans Preference Act, if our final decision was to remove him, and that he could be represented by an attorney, etc. I also again told him that if he resigned before the charges were officially preferred against him, they would not appear in his official record; but that if he elected to resign after receiving the letter, the resignation action (Form 50) would have to show that resignation was received after charges had been preferred for the offences listed in the letter. Mr. Goodman again indicated that he "understood all of that." At this point, I learned that Mr. Porter had called in, stating that he would not be in until later in the morning. I, therefore, suggested to Mr. Goodman that he return at 1:00 p.m. to discuss the situation with Mr. Porter as he had requested. At 1:00 p.m. I was in Mr. Porter's office when Mr. Goodman came in. Mr. Porter received him in a very cordial manner, making a few opening remarks which had nothing to do with the subject to be discussed, but designed to "put him at ease." Mr. Porter, having the still unsigned letter of charges before him, carefully explained to Mr. Goodman the circumstances which brought about the letter of charges proposing his removal, as I had previously done. He pointed out the fact that he had not signed the letter, so that if he (Mr. Goodman) elected to resign to prevent the charges from becoming a part of his official record, he would have the opportunity to do so. He further told Mr. Goodman that if he elected to take the letter, he would sign it and hand it to him; that

he would then have the privilege of answering the letter of charges within ten days and, if our final decision was to remove him, he could appeal the action under Section 14 of the Veterans Preference Act, and could engage counsel to represent him in such an appeal, etc., but that if he elected to resign after that, the record would have to show that resignation was tendered after charges had been preferred for the reasons cited in the letter. Mr. Goodman indicated that he understood the situation. After some further statements concerning the charges enumerated in the letter, Mr. Goodman said, "I suppose I'll take the letter. I've been fighting all my life and I might as well fight this." Mr. Porter then signed the letter and handed it to him and had him sign a statement on the bottom of a carbon copy to the effect that he had received the original thereof. Mr. Goodman then left Mr. Porter's office and I returned to my office. I marked my desk calendar to show that Mr. Goodman's reply to the letter of charges was due on October 16, 1961 (ten days after delivery to him). As mentioned above, this action transpired on the afternoon of Wednesday, October 4, 1961. On Thursday, October 5, 1961, Mr. Goodman came to Mr. Porter's office, and again in my presence, stated that "I have been thinking this thing over. I showed the letter to someone and they advised me to resign as soon as possible, so I guess I'll resign." I returned to my office and picked up a copy of Standard Form No. 52,

which is used for resignations and other personnel actions, and returned to Mr. Porter's office. Before Mr. Goodman filled out the resignation part of the Form, he weakly queried, "Will this now go in my record?" Mr. Porter said, "Yes, as we have explained to you before, we have no alternative now to stating that your resignation was received after the letter of charges had been preferred." Mr. Goodman, after examining the Form, asked "What reason should I give for my resignation?" Mr. Porter replied, "Give any reason you want. You can say, for example, 'to look for a better position.'" Mr. Goodman then stated that he knew someone in nearby Maryland who had an electric shop and he had asked him on occasions to come to work for him. He further said, "I might even buy an interest in the shop," etc. Mr. Goodman then used a corner of Mr. Porter's desk to fill out the resignation form, stating the reason for his resignation, "To go outside to advance my self for a better position." He then asked, "What effective date should I show?" To this Mr. Porter replied, "Show any effective date you want; that is, within this month--we are not asking that you leave right away." Mr. Porter then looked at his calendar and said, "Why don't you make it the 27th--that's the last payday in the month?" Mr. Goodman then entered the effective date as October 27, 1961 and signed the Form. He then left the office. Nothing further was heard from Mr. Goodman until the telegram demanding that he be allowed to recall his resignation, etc. was received in this office on Monday morning, October 16, 1961.

Filed September 7, 1965

Department of Commerce
Administrative Order No. 202-20 (Revised)

3 Withdrawal of a Resignation - A resignation which has been accepted may not be withdrawn or postponed thereafter except prior to separation, and then only by approval of the appropriate appointing officer (14 A.G. 260).

Filed May 14, 1965

AFFIDAVIT

District of Columbia, ss:

City of Washington

Glynn H. Goodman, being first duly sworn on oath, deposes and says that he is the Plaintiff herein, that in October, 1961, he retained I. William Stempil as his attorney to set aside his alleged resignation dated October 5, 1961, as electrician in the National Bureau of Standards, Department of Commerce; that the said I. William Stempil passed away in early 1964 and that the first time he learned of Mr. Stempil's death was through an article in a Washington newspaper; that after learning of Stempil's death, he made every effort to contact Mr. Stempil's family in order to get the file of the Civil Service Commission appeal in his case; that he obtained the file in February, 1964; that he has not been negligent or tardy in his claim; as he is not a lawyer, he did not know of the status of the case, until after the death of his former attorney, I. William Stempil.

Glynn H. Goodman

Filed March 27, 1965

MOTION FOR DISCOVERY AND PRODUCTION OF DOCUMENTS FOR INSPECTION, COPYING OR PHOTOGRAPHING.

Comes now the Plaintiff by counsel and moves the Court for an order for discovery and production of documents for inspection, copying and photographing pursuant to Rule 34, Federal Rules of Civil Procedure, as the below designated documents are in the possession, custody, and control of the Defendants, and are necessary evidence to the prosecution of Plaintiff's case, and the documents are not privileged. The documents designated are:

1. All inter-office memorandums, letters, and affidavits, pertaining to the alleged resignation and also to the work of Plaintiff.

2. The names, addresses, and telephone numbers of persons who have given statements or affidavits about Plaintiff.

3. All memorandums addressed to or written by Mr. Coiner and Mr. Porter of the National Bureau of Standards, concerning Glynn H. Goodman, Plaintiff.

Donald H. Dalton

Filed May 24, 1965

ORDER

Upon consideration of plaintiff's motion for discovery and production of documents for inspection, copying or photographing and of defendants' opposition thereto, it is by the Court this 24th day of May, 1965

ORDERED that plaintiff's motion for discovery and production of documents for inspection, copying or photographing be and it hereby is denied.

JUDGE

Filed June 11, 1965

March 8, 1965

Mr. G. R. Porter, NBS

Personnel Officer

Mr. W. T. Taylor, Administrative Officer

Plant Division

Resignation of Glynn H. Goodman

I understand from Mr. A. S. Coiner, Personnel Division, that Mr. Brent Quinn, former Assistant Chief, Plant Division, has made a statement concerning what transpired in his office on Oct. 3, 1961, concerning the events which led to the resignation of Mr. Glynn H. Goodman, an employee of this division.

What happened that day is reasonably clear in my mind and the following statement is made as I remember it, since I, as Administrative Officer of this division was present at this meeting.

On Monday, October 2, 1961, Mr. A. S. Coiner, Personnel Generalist called and asked me to arrange a meeting between he and Mr. Brent Quinn, Assistant Chief of the Plant Division, Mr. Glynn Goodman and myself on the next day October 3, 1961, relative to a request from the Commerce Department, that Mr. Goodman be separated from the Bureau because of certain evidence in their possession, which made him an undesirable employee.

On Tuesday morning, Oct. 3, 1961, Mr. Goodman, Mr. Augustyn, Assistant Foreman, Electric Shop and myself met in Mr. Quinn's office. A few minutes after we arrived in Mr. Quinn's Office, Mr. Coiner came in and after a few words of greeting, told Mr. Goodman that in the process of investigating him for a secret security clearance, certain evidence of various arrests were uncovered and that the Department had issued orders to separate him. Mr. Coiner had in his possession an undated and unsigned letter prepared for the Personnel Officers signature listing the charges and proposal to separate Mr. Goodman. Mr. Coiner gave this letter to Mr. Goodman to read, stating that if he wished to resign before this letter was signed and presented formally to him, he could, and this letter would not become an official part of his record. He further stated, that if he elected not to resign the letter would become a part of his record and he would have ten days in which to answer the charges and could

obtain counsel to represent him. Mr. Coiner made it very clear to Mr. Goodman that he was not trying to coerce him into resigning.

Mr. Goodman then stated that he would like to see Mr. Porter, NBS Personnel Officer. Mr. Coiner said that, that would be perfectly all right and that if Mr. Goodman would come in the first thing the next day, he could talk to Mr. Porter.

Mr. Coiner advised me later, on Oct. 4, 1961, that Mr. Goodman had accepted the letter of charges and was going to fight the case.

On October 5, 1961, much to my surprise, Mr. Coiner called me and told me that Mr. Goodman had come into the office and resigned, the effective date to be Oct. 27, 1961. Mr. Coiner asked me to pick up the Form 52 from him and complete action on it.

I brought the Form 52 with Mr. Goodman's signature on it, back to the office where it was logged in and prepared for Mr. Quinn's and my signature. After I signed it, I took it to Mr. Quinn's office for his signature. As is the procedure in this office, personnel actions are normally signed on the same day or no later than the following day. Since this was not an ordinary case, every effort was made to expedite it, and it is reasonably certain that this Form 52 was signed by Mr. Quinn on the same day I presented it to him. After Mr. Quinn signed it, I forwarded it to the Personnel Office for processing.

W. T. Taylor

Filed May 7, 1965

MOTION TO AMEND COMPLAINT AND ALSO TO ADD THE UNITED STATES AS A DEFENDANT AND TO SUBSTITUTE JOHN T. CONNOR FOR LUTHER H. HODGES AS SECRETARY OF COMMERCE.

Comes now the Plaintiff by counsel and moves the Court to add the United States as a Defendant and to substitute John T. Connor in place of Luther H. Hodges as Secretary of Commerce for the following reasons:

1. Public Law 88-519, 28 U.S.C. 1346(d), August 30, 1964, grants jurisdiction to the United States District Court to award back pay to federal employees.
2. That John T. Connor has succeeded Luther H. Hodges as Secretary of Commerce and that there is a substantial need for continuing and maintaining this action; that John T. Connor adopts or continues or threatens to continue the action of his predecessor in this case.
3. That leave be granted to amend the complaint so as to conform the complaint to the addition and substitution of the Defendants.
4. And for other reasons to be made apparent at the hearing hereof.

Respectfully submitted,

Donald H. Dalton

Filed July 29, 1965

NOTICE OF APPEAL

Notice is hereby given this 29th day of July, 1965, that GLYNN H. GOODMAN, Plaintiff hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 27th day of July, 1965 in favor of Defendant against said Plaintiff.

Donald H. Dalton
Attorney for Plaintiff

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BRIEF FOR APPELLANT AND JOINT APPENDIX

IN THE

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22521

GLYNN H. GOODMAN, Appellant

v.

UNITED STATES OF AMERICA
MAURICE H. STANS, Individually and as Secretary of Commerce of the United States of America; ALLEN V. ASTIN, Individually and as Director, National Bureau of Standards; ROBERT E. HAMPTON, Individually and as Chairman, United States Civil Service Commission; LUDWIG ANDOLSEK, Individually and as Commissioner, United States Civil Service Commission; and JAMES E. JOHNSON, Indi Individually and as Commissioner, United States Civil Service Commission

Appeal from the United States District Court
For The District of Columbia

Donald H. Dalton
Federal Bar Building West
1819 H Street, N.W.
Washington, D. C.
Attorney for Appellant

QUESTIONS PRESENTED

1. Were the additions of words and the filling in of the blanks in the resignation form repugnant to the Constitution under the impairment of contract clause so as to deny due process?

2. Did the Department of Commerce and the National Bureau of Standards abuse its discretion in obtaining the resignation of appellant?

3. Was the resignation voluntary under the circumstances of command influence and appellant's physical condition?

4. Was appellant entitled to an independent personnel advisor during the removal proceeding?

*This case was previously before this Court in Goodman v. United States, et al, No. 19654, Decided March 10, 1966; 123 U.S. App. D.C. 165, 358 F 2d. 532 (1966).

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22521

GLYNN H. GOODMAN,

Appellant

v.

UNITED STATES OF AMERICA, et al,

Appellees

APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF COLUMBIA

JURISDICTIONAL STATEMENT

This is an appeal docketed November 26, 1968, under the provisions of Title 28, Section 1291, U.S. Code, from an Order of the United States District Court for the District of Columbia entered October 17, 1968, granting summary judgment for the defendants - appellees - and denying summary judgment for the appellant herein, Notice of Appeal was filed on October 22, 1968.

Jurisdiction of this cause below was based on 28 U.S.C. 2201-2202 (The Declaratory Judgment Act), 5 U.S.C. 551-559 (The Administrative Procedure Act), 5 U.S.C. 7501 (The Lloyd-La Follette Act as restated), 5 U.S.C. 7511, 7512 and 7701 (The Veterans Preference Act as restated).

STATEMENT OF THE CASE

This is a resignation case of a Government employee.

It is requested that the following pages from the Transcript (2/14/67) be read: Pages 9-23, 38-60, 92-111, 143-144. In the Transcript (3/20/67) Pages 11, 16-46, 49-67.

In Goodman v. United States, No. 19654, 123 U.S. App. D.C. 165, 358 F 2d. 532 (1966), in a Per Curiam Judgment, the Court stated:

> "ON CONSIDERATION WHEREOF, it is ordered and adjudged by this Court that this case is hereby remanded to the District Court for further proceedings consistent with the opinion of the Court."

Pursuant to the above judgment, the case was remanded by the District Court to the Civil Service Commission for a hearing.

Appellant is an Honorably Discharged, Partially Disabled Veteran of the United States Army, who served the nation during World War II.

He was employed in the National Bureau of Standards of the Department of Commerce, as an electrician, WB-9, $2.79 per hour in 1961.

On or about October 4, 1961, he was called into the office of Brent M. Quinn, Assistant Chief, Plant Division, National Bureau of Standards, which is located in Room 1, Sterrett House, at the Bureau's then location, Van Ness and Connecticut Avenue, N.W., Washington, D.C.

At this meeting besides Mr. Quinn were A. S. Coiner, Personnel Manager Specialist, William T. Taylor, Administrative Officer and Mr. Augustine, Assistant Electrician Foreman. All of these Government officials were superior to appellant in the chain of command at the Bureau.

Mr. Coiner had with him at this meeting an unsigned letter of charges and a resignation, Form 52 (Tr. 142, 2/14/67). Appellant was nervous, upset and taking medication prescribed by his physician.

He was not advised of his right to have a personnel advisor present nor advised to consult a personnel advisor, nor to consult an attorney.

Appellant was not advised of his right that he did not have to answer any questions, that he could remain silent, that he was entitled to have an independent

personnel advisor or an attorney, and that if he could not afford an attorney, one would be furnished him.

At this meeting appellant testified as follows:

> Q. "Didn't Mr. Coiner say anything concerning papers?
>
> A. (Goodman) Yes, he said if I'd sign the resignation now, my record would be clean, and if I didn't, the charges would be brought up.
>
> Q. Did he say anything to you about the resignation at that time?
>
> A. Yes, he asked me to sign one. (Tr. 47, 2/14/67)
>
> Q. Did Mr. Porter say to you that they had evidence in the safe?
>
> A. No, Mr. Coiner said that.
>
> Q. What did he say?
>
> A. He said that they had evidence in the safe, and if I did not sign, the charges that they had would be brought against me." (Tr. 50, 2/14/67)

Previous to this meeting, there was a strategy meeting with George R. Porter, Head of the Personnel Department, National Bureau of Standards and A. S. Coiner, Personnel Manager Specialist.

Mr. Porter testified as follows:

> Q. Didn't you mention the resignation at the strategy meeting on October 2, with Mr. Coiner?
>
> A. Mr. Coiner and I did discuss this subject, yes, sir.

Q. And, is it not true that you decided that you would offer Mr. Goodman a resignation or a letter of charges, at that time, and how you were going to handle the resignation and the letter of charges?

A. It was discussed, but at that time, Mr. Coiner was to meet with the plant division people and Mr. Goodman the next day, that the emphasis would be on the proposed removal for cause, and it would be brought out in the discussion, that if Mr. Goodman wished to resign, he could do so and we told him what conditions it would be possible.

Q. You discussed---

A. We discussed the possibility of a resignation, if Mr. Goodman wanted to avail himself of it, but we were not asking for it.

Q. When would that have to be done?

A. We would have expected--we would have given him an opportunity to think about it and let us know.

Appellant was under the care of Dr. Hageage, who treated him for a nervous upset. Dr. Hageage's records show he treated appellant on October 7, 1961. He was in the hospital in 1961 for a GI series for ulcers.

In the office of George Porter on October 5, 1961, appellant signed a blank form 52. The effective date of the resignation was dictated by George Porter, Personnel Office. Appellant testified as follows:

Q. Well, how about the day of October 27, 1961?

A. Mr. Porter's.

Q. Did he tell you that?

A. Yes, sir.

Q. Would you have signed that resignation if you saw these remarks that are down in part one, as to unsuitability, intentional deception, conduct unbecoming and intentional false and misleading statements, would you have signed that resignation?

A. No, sir-.

Q. Did Mr. Porter tell you that was going to go in this form?

A. No, sir.

Q. What did Mr. Porter say about obtaining another job, if you signed this?

A. He said, if I could get transferred within a certain length of time, in the time I was still working, and him and Mr. Coiner both stated that it wouldn't go into my record, and everything.

Q. What would not go in your record?

A. This charges, if I resigned.

Q. Mr. Porter said that?

A. Mr. Porter and Mr. Coiner, both.

Q. Did they say that on October 5?

A. Yes sir, and, I could transfer down town, and I went down and the man down there told me that I can't transfer. (Tr. 54-55, 3/20/67)

On October 5, 1961, while nervous and upset, appellant signed a resignation Form 52 and the only words he put in the Form 52 were:

"October 5, 1961

To go outside to advance myself for a better position.

Glynn H. Goodman."

Then below under part 1 is the following in typewriting by the Bureau of Standards:

"(1) Unsuitability for employment in the National Bureau of Standards as evidenced by repeated use of intoxicating beverages to excess.

"(2) Intentional deception in obtaining your employment.

"(3) Conduct unbecoming a Government employee.

"(4) Intentional false and misleading statements on an official document."

Then, on the front side of the Form 52, among other matters, is the following:

"Resigned while action pending to be separated for:
(See over)"

On October 17, 1961, his then attorney, I. William Stempil, sent a telegram to the National Bureau of Standards, withdrawing the said resignation. The withdrawal was denied by George R. Porter. I. William Stempil passed away and the files could not be located for a long period of time. Subsequently, this action was commenced before the Civil Service Commission and then the District Court.

PROCEEDINGS BELOW

Pursuant to a decision of this Court in Goodman v. United States, No. 19654, 123 U.S. App. D.C. 165, 358 F 2d. 532 (1966), the case was remanded to the District Court on March 10, 1966.

On April 28, 1966, an Order was issued by the District Court, remanding to the United States Civil Service Commission, "with direction to conduct further administrative proceedings, including an oral hearing, relating to the manner of /appellant's/ separation from the Government service."

A hearing was held in the Civil Service Commission.

On November 7, 1967, a Consent Order was entered, reinstating the case in the District Court. On April 25, 1968, Appellees filed a Motion For Summary Judgment. On May 24, 1968, Appellant filed Opposition To Defendants' Motion For Summary Judgment and Plaintiff's Motion For Summary Judgment. On October 17, 1968, Appellees' Motion For Summary Judgment was denied. On October 22, 1968 notice of appeal was filed.

STATUTES AND REGULATIONS INVOLVED

United States Constitution

Article I, Section 10
Article II, Section 2, Clause 2
Fifth Amendment

Statutes

5 U.S.C. 1104
5 U.S.C. 1301
5 U.S.C. 1302
5 U.S.C. 7501, Lloyd-La Follette Act
5 U.S.C. 7511, Veterans Preference Act.
5 U.S.C. 7512, Veterans Preference Act.
5 U.S.C. 7701, Veterans Preference Act.
8 U.S.C. 43, Civil Rights Act.

Civil Service Rules and Regulations

Federal Personnel Manual Supplement 752-1

SUMMARY OF ARGUMENT

I

The resignation was null and void as the additions of words and the filling in of the blanks were an impairment of the contract so as to deny due process under the Constitution.

II

The resignation was involuntary as it was dictated by authority and was made at the will and the request of the Bureau of Standards.

III

Appellant was not apprised of his right of personnel counsel at the meeting of the officials on his removal.

IV

Appellant was denied due process.

ARGUMENT

I. The Court Below Erroneously Concluded That It Could Not Review Administrative Action If There Is A Record Which Will Support The Opinion.

The Court below (Corcoran, J.) erroneously ruled that the resignation was voluntary instead of involuntary. The Court ruled in part as follows:

> "I cannot see how I can sit here and second guess the Board of Appeals which made a substantial record and which interpreted that record to uphold their position. I cannot second guess them on the facts if there is a record which will support their opinion, and I think there is a record. I have read it carefully. Whether I agree with them or whether I do not in their interpretation of that record, that record will support their view if they want to adopt it; and if that is so, then my hands are tied." (J.A. -)

This Court has held that decisions of the Civil Service Commission are reviewable. In Paroczay v. Hodges, 111 U.S. App. D.C. 362, 297 F 2d. 439 (1961) 219 F Supp. 89 (resignation); Dabney v. Freeman, 123 U.S. App. D.C. 166, 358 F 2d. 533 (1966) (resignation) and many other cases, too numerous to mention.

In Powell v. Brannan, 91 App. D.C. 16, 196 F 2d. 871, Judge Washington stated:

> "Where there has been a substantial departure from applicable procedures, a misconstruction of the governing legislation, or like error going to the heart of the administrative determination, a measure of judicial relief may on occasion be obtainable."

Clearly the Supreme Court has pointed out that an administrative decision will not be accepted where the administrative officer "exceeds his authority by making a determination that is arbitrary or capricious or unsupported by the evidence." Dismuke v. U.S., 297 U.S. 167, 80 L Ed. 256; Silberschein v. U.S., 266 U.S. 221, 69 L Ed. 256, 258; Estep v. U.S., 327 U.S. 114, 90 L Ed. 567.

Continuing in Dismuke, supra, the Supreme Court stated:

> "If he is authorized to determine questions of fact, his decision must be accepted unless he exceeds his authority by making a determination by which arbitrary or capricious or unsupported by evidence, see Silberschein v. United States, 266 U.S. 221, 225, 49 S. Ct. 97; Meadons v. United States, 281 U.S. 271, 274, 74 L. Ed. 852, 853, 50 S. Ct. 279, 73 A.L.R. 510; Degge v. Hitchcock, 229 U.S. 162, 171, 57 L. Ed. 1135, 1137, 33 S. Ct. 639, or by failing to follow a procedure which satisfies elementary standards of fairness and reasonableness essential to the due conduct of proceedings which Congress has authorized."

There are other cases too numerous to mention of the right of the Courts to review administrative actions.

II. The Additions Of Words And The Filling In Of The Blanks In Appellant's Resignation Form 52 and Form 50 Is Repugnant To The Constitution Under The Impairment Of Contract Clause So As To Deny Due Process.

In the Form 52, dated October 5, 1961, in the appellant's handwriting is the following:

"Oct 5, 1961

"To go outside to advance myself for a better position.

"Oct. 27, 1961

"Glynn H. Goodman"

Then below under Part I is the following in typewriting:

"(1) Unsuitability for employment in the National Bureau of Standards as evidenced by repeated use of intoxicating beverages to excess.

(2) Intentional deception in obtaining your employment.

"(3) Conduct unbecoming a Government employee.

"(4) Intentional false and misleading statements on an official document."

Then, on the front side of the Form 52, among other matters, is the following:

"Resigned while action pending to be separated for:

"(See over)"

When Goodman signed the resignation, all he put in was: "To go outside to advance myself for a better position," and the dates.

The Form 52 was blank. Goodman did not know of any other writing or typewriting on the Form 52. (J. A. 3-4) Form 50 was filled out by the Department. There was not proof of the accuracy of the derogatory matter.

Appellant did not give his consent to the filling in of the blanks. This filling in of the blanks was a fraud, deception and misrepresentation practiced on the appellant.

The view of commercial transactions is stated by the Supreme Court. Mr. Justice Clifford in Angle v. Northwestern Life Ins. Co., 92 U.S. 330, 340-341, 23 L. Ed. 556, stated:

> "Where blanks exist in negotiable securities, delivered to another for use, the custody of the paper, under such circumstances, gives the custodian the right to fill the blanks; but it does not confer authority to make any addition to the terms of the note; and if any such, of a material character, are made by such a party from whom the paper was received, it will void the note, even in the hands of an innocent holder, Ivory v. Michael, 33 Mo. 400."

Before examining the Constitutional basis of appellant's position, it is well to consider the fundamental basis of contracts in our legal system.

Principles of contract law are embedded in the Constitution:

> "No State shall pass any Law impairing the Obligation of Contracts." Article 1, Section 10, United States Constitution.

Chief Justice Marshall in The Trustees of Dartmouth College v. Woodward, 17 U.S. 518, 4 Wheat. 518, 4 L. Ed. 629 upheld the original charter granted by King George the Third of England to Dartmouth College, and he stated:

"The opinion of the Court after mature deliberation is that this is a contract the obligation of which cannot be impaired without violating the Constitution of the United States. This opinion appears to us to be equally supported by reason, and by the former decisions of this Court."

In Campbell v. United States, 48 F. Supp. 398, the Court stated:

"that 'no power to curtail the amount of the benefits which Congress contracted to pay was reserved to Congress;' that no such power 'could be given by any regulation promulgated by the Administration;' that when the Government lawfully becomes a party to such a contract, 'its rights and duties therein are' governed generally by the law applicable to contracts between private individuals;' that rights arising out of such contracts 'are protected by the Fifth Amendment;' that the due process clause prohibits the United States from annuling them [such contracts], unless indeed, the action taken fall within the federal police power or some other paramount power." Ibid at p. 400.

The Regulations involved

(a) The authority for rule making of the Civil Service Commission is in 5 USC 1104, 1301 and 1302. Under this authority, Federal Personnel Manual TS 557, R-1-30 and R-1-30.1, the Civil Service Commission and the Department of Commerce rely for additions and filling in of the blanks in the resignation Form 52 and Form 50.

R-1-30.1 states:

"Enter the factual reason(s) for resignation (see Items 3d and 4 in General Instructions, above), unless it is stated in the nature of action column. In addition, show one of the following items, if applicable:

1. "Resigned while action pending to be separated for ....[1]"

2. "Resigned while charges were being prepared for ...."

3. "Resigned after being advised that a letter of charges was being prepared for ....."

4. "With reemployment rights in (agency) under (authority)."

This entry is required in cases where the pending separation was directed by the Commission, as well as cases where the pending separation was initiated by the agency.

Inasmuch as appellant had the right to resign, the Civil Service Commission or the Department of Commerce could not abrogate this right with regulations issued under 5 USC 1104, 1301 and 1302, and Federal Personnel Manual TS 557.

The Congress has cautioned the military departments that they could not issue administrative discharges which violated the Constitutional rights of the soldier, sailor or airman.

Here the Department is circumventing Congressional legislation in the Lloyd-La Follette Act, 5 USC 7501 and the Veterans Preference Act, 5 USC 7511, 7512, and 7701 by creating conditions leading to an involuntary resignation then placing derogatory matter in the resignation which vitiates the effect of resignation.

The Civil Servant, by adverse comments on his resignation, is as incapacitated for future employment as if he lost a hardly contested adverse action. These comments are unfair and are a denial of due process.

Joyce v. Housing Authority of the City of Durham, No. 20 October Term, 1968, decided January 13, 1969, is a case involving an eviction of a tenant from a federally assisted project. The Department of Housing and Urban Development issued a circular subsequent to the eviction stating tha t notice was required. The North Carolina Supreme Court refused to apply the HUD circular and reaffirmed its prior decision. The Supreme Court was very clear in stating that the lease agreement between authority and petitioner remains inviolate.

In an adverse decision, Jenson v. Olson, 353 F 2d. 825, (Cir. 8, 1965), which involved the point of law raised by appellant, a municipal employee was concerned and not a federal employee with Veterans Preference Act and Lloyd-La Follette Act protections.

Judge Learned Hand in a well reasoned opinion in Bomar v. Keyes, 162 F 2d. 136, held that a New York school teacher cannot be discharged under the Civil Rights Act, 8 USC 43, which was a privilege under the Judiciary Act of New York, for absence from duty when she served on the jury.

The District Court has ordered changes in the SF 50 in Aldo C. Frattini v. Paul H. Nitze, Civil Action No. 2546-64 and in John H. McIlwainer v. Orville L. Freeman, Civil Action No. 1400-64.

The Supreme Court has upheld the Constitutional rights of Government employees in Pickering v. Board of Education, 88 S. Ct. 1731, (1968) (First Amendment); Gardner v. Broderick,88 S. Ct. 1913, 20 L. Ed. 2d. 1082 (1968) (Fifth Amendment); Garrity v. New Jersey, 385 U.S. 493, 87 S. Ct. 616, 17 L. Ed. 2d. 562 (1966); Spevack v. Klein, 385 U.S. 511, 17 L. Ed. 2d. 574, (1966) (Fifth Amendment).

A federal employee can be stigmatized for life by comments on his resignation form, without proof, without an opportunity to confront his accusers, and without a hearing.

III. The Resignation Was Involuntary Compulsory And Dictated By Authority And A Violation Of Due Process.

In reference to coercion in obtaining confessions, and which likewise applies to involuntary resignation, is a statement pertaining to two bills for interrogating the accused, HR7384 and HR7808:

> "As noted in the article a key concept in the proposed legislation is the provision for a neutral 'master of examination,' who by supervision over interrogation would ensure that psychological and other subtle pressures would

> not be used to produce coercion. A deficiency in the Miranda case is that once the pat warning is given, such psychological coercions may still be exercised."[1]

Appellant was called into the office of Brent Quinn, Assistant Chief, Plant Division, National Bureau of Standards. Also present were A. S. Coiner, Personnel Management Specialist, William T. Taylor, Administrative Officer and Mr. Augustine, Assistant Electrician Foreman.

At this meeting appellant was nervous, upset and under drugs. He was taking tranquilizers. He was not competent.

> "Adjudications of competency to stand trial are unpredictable when the defendant is on tranquilizers even with unequivocal psychiatric recommendation of competency."[2]

Dr. Frank S. Caprio, the distinguished Washington psychiatrist stated:

> "From a medical point of view, I don't believe that Mr. Goodman submitted what a psychiatrist might consider a 'voluntary resignation.'"

The record further shows the totality of circumstances of psychological coercion in the office of Brent Quinn, A. S. Coiner, William T. Taylor and Mr. Augustine:

> Q. (Dalton) Didn't Mr. Coiner say anything concerning these papers?

---

1. Congressman Robert Taft, Jr. in the Evening Star of June 6, 1967.
2. "Tranquilizers and Competency To Stand Trial," 54 American Bar Association Journal 284, March 1968.

A. (Goodman) Yes, he said if I'd sign the resignation now, my record would be clear, and if I didn't, the charges would be brought up.

Q. Did he say anything to you about a resignation at that time?

A. Yes, he asked me to sign one. (Tr. 47, 2/14/67)

Q. Did Mr. Porter say to you that they had evidence in the safe?

A. No, Mr. Coiner said that.

Q. What did he say?

A.. He said that they had evidence in the safe, and if I did not sign, the charges that they had would be brought against me. (Tr. 50, 2/14/67)

The testimony of the National Bureau of Standards officials, Porter, Coiner, and Taylor are bureau oriented.

Alfred S. Coiner, personnel management specialist, testified that he has been at the National Bureau of Standards for 45 years and that he has been in personnel work for 40 years. He arranged a meeting for October 3 at 9:00 in the morning. Present at the meeting was Brent Quinn, Acting Chief of the Plant Division, W. T. Taylor, administrative office of the National Bureau of Standards and Foreman Augustine.

By Mr. Farrar, Legal Advisor, National Bureau of Standards:

Q. I see. And what did you have with you when you arrived at the meeting?

A. (Coiner) I had this letter of charges proposing his removal.

Q. Was the letter dated or signed at that time?

A. It was not. (Tr. 142, 2/14/67)

****

A. Oh, yes. I told him the purpose of my visit. The purpose of my visit, I told him quite plainly, was to let him see the charges and see if he would decide whether or not to resign before he was formally presented with the charges.... (Tr. 144, 2/14/67)

****

Q. Did you tell Mr. Goodman to resign?

A. Absolutely not. (Tr. 143-144, 2/14/67)

The testimony of William T. Taylor, the Administrative Officer of the National Bureau of Standards states:

A. (Taylor) If he did't take the letter then charges would be preferred against him, of course. I mean, he could resign if he wished. If he did not take the letter, he could resign and it would not become a part of his official personnel folder. (Tr. 118, 2/14/67)

By Mr. Farrar, Legal Advisor, National Bureau of Standards:

Q. Where was the resignation form then? Who had the resignation?

A. (Quinn) I think, it was Mr. Coiner.

Q. Did he have it in his hand?

A. Yes, Sir, he laid it on the edge of my desk. I remember that. (Tr. 92, 2/14/67

****

A. (Quinn) ... But in the course of the conversation I know that - I learned that - he was being asked to resign. How it was worded, I couldn't bring that back word for word; but in the course of the conversation he was being asked to resign, due to some departmental requirements that were stated. (Tr. 93-94, 2/14/67)

****

HEARING OFFICER: Could you, Mr. Quinn, give us just the gist of the conversation, even though you can't remember every work?

THE WITNESS (Quinn): The gist of the conversation was - the essence of it was - to resign, and that would be the end of it and he could go to work somewhere else - or words to that effect.

HEARING OFFICER: That was the substance?

THE WITNESS: Yes. - Now, I think, if my memory serves me correctly, the promise of not having to go on record and he could go to work somewhere else - that statement being made by Mr. Taylor and not Mr. Coiner - and that it wo would be a clear record. (Tr. 94-95, 2/14/67)

****

Q. (Mr. Dalton) Why did Mr. Goodman have to be brought there among or before three supervisors?

MR. FARRAR: I object to that question.

HEARING OFFICER: The objection is sustained, there is no reason for bringing that in.

MR. DALTON: He was there and the supervisors.

HEARING OFFICER: Let me put it this way: I am going to ask it of this gentleman. The question was: why was it necessary to bring Mr. Goodman up before four supervisors? I don't know whether Mr. Quinn even knows that. (Addressing the witness) Do you know the answer?

THE WITNESS: I don't. (Tr. 98-99, 2/14/67

****

The proposition of law is coercion and falls within the doctrine of Miranda v. Arizona, 384 U.S. 456, and Mathis v. U.S., 88 S. Ct. 1503 (1968). See Ingalls v. Brown, 126 U.S. App. D.C. 266, 371 F 2d. 151; Ingalls v. Zuckert, 114 U.S. App. D.C. 39, 309 F 2d. 659, 235 F. Supp. 89.

Squarely, the circumstances of this case, the letter of charges, presented at the same time as the resignation, and the combination of command influence, spell an involuntary resignation.

Federal Personnel Manual Supplement 752-1, 24.02-25 states:

> "g. Voluntary v. involuntary character of personnel action."
>
> (1).."In the case of Paroczay v. Hodges, the court ruled that the resignation of the plaintiff (Paroczay) was involuntary and, therefore, void and of no effect."
>
> (2).."The Commission holds, however, that the principle implicit in the Court's decision extends beyond resignations and beyond the issue of whether or not the employee was given a reasonable time to make a choice, it extends to any situation in which an agency deprives an employee of freedom of choice. Thus it applies to such tactics as the use of duress, intimidation, or deception as well as to the denial of adequate time to choose between alternatives, and it applies whether these tactics are used to obtain a resignation.... In short, the voluntary or involuntary character of a personal action is determined not by the form of the action but by the circumstances which produced it...."

> (3).."It is improper for the agency to use duress, intimidation, or deception to force him to choose a particular course of action. The choice must be His own free will or the action is not a voluntary one. In general, for the action to be considered voluntary, it should be evident that the employee understood the transaction, was free to choose, and was given a reasonable time to make her choice. Also a voluntary action permits the employee to set the effective date; ...."

Clearly and obviously, the resignation was involuntary. It shocks the conscience that a person is coerced in giving up a permanent position in the Federal Government.

The law is specific on cause and procedure of removal actions:

> "(a) An individual in the competitive service may be removed or suspended without pay only for such cause as will promote the efficiency of the service." 5 USC 7501

Also notice if required, a copy of charges, a reasonable time for filing a written answer and also a written decision. 5 USC 7501

Is forcing a government employee's resignation a "cause as will promote the efficiency of such service?" Obviously, the answer is no.

The doctrine of Paroczay,[1] Dabney,[2] and others is that the resignation must be voluntary. It is submitted

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1. See Paroczay v. Hodges, 297 F 2d. 439, 219 F Supp. 89
2. See Dabney v. Freeman, 123 U.S. App. D.C. 166, 358 F 2d. 533

that the time factor is irrelevant as in Rich,[1] Competello,[2] and others, if the controlling principle is whether the resignation was voluntary or not. Even though Goodman came into Porter's office a day or two later, still considering Goodman's health and state of mind, the resignation was involuntary. Ingalls v. Brown, supra; Ingalls v. Zuckert, supra.

Judge Youngdahl, in Paroczay v. Hodges, 219 F. Supp. 89, in a well-reasoned opinion on the voluntariness of resignation stated:

> "Even though none of these facts are disputed, the ultimate conclusion from these facts - that the resignation was voluntary cannot stand in the fact of legal standards of voluntariness - implicit in the opinion of the Court of Appeals."

Appellant at the interview on October 3 or 4, 1961, received no warning that he could have a lawyer, that he did not have to answer the inquiry of whether to resign or face charges, and that he did not have to answer and could stand mute. Miranda v. Arizona, 384 U.S. 436, 16 L Ed. 2d. 694, 86 S. Ct. 1602, 10 ALR 3d 974.

Being in a room with four officials of the National Bureau of Standards when an employee is asked to face charges or resign, the privilege against self-incrimination arises.

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1. See Rich v. Mitchell, 106 U.S. App. D.C. 343, 273 F 2d. 78, cert. denied 368 U.S. 854
2. See Competello v. Jones, 105 U.S. App. D.C. 412, 267 F 2d. 189.

Mr. Chief Justice Warren, in Miranda v. Arizona, supra, stated:

> "To summarize, we hold that when an individual is taken into custody, or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is in jeopardy." 384 U.S. 470

We must keep in mind that A. S. Coiner was the main prosecuting witness. Also in Government's Exhibit No. 1 contains the notice of proposed removal, dated October 4, 1961. The letter states on the last page: "If you do not understand the above reasons why your removal is proposed, contact Mr. A. S. Coiner for further explanation." Again please note Coiner is the main prosecuting witness for the Bureau of Standards. Please note how Bureau oriented is Coiner. After 45 years service, he gets a luncheon with Bunny Girls. (See appellant's Exhibit below. The Government Employee's Exchange of February 21, 1965.) See Memorandum.[1]

In Robert T. Mathis, Sr. v. United States, 88 S. Ct. 1503 (1968), October Term, Decided May 6, 1968, the Supreme Court expanded the Miranda doctrine to include income tax investigation.

Prima facie, the resignation was the product of the officials of the National Bureau of Standards, who had plaintiff alone, by himself, without advice of an

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1. Memorandum Subsequent to Oral Argument submitted in Goodman v. U.S., 123 U.S. App. D.C. 165, 358 F 2d. 532 (1966). (Authorities for independent personnel advisor in adverse actions.)

attorney or an independent personnel advisor, and without even advice on his rights to remain silent, or that he could have a lawyer present. The issue of facing charges or resigning was presented.

IV. The Resignation Was Withdrawn Before It Was Accepted.

The facts of the case reveal that the alleged resignation was submitted on October 4, 1961, and to be effective on October 27, 1961. It was withdrawn on October 16, 1961.

The withdrawal of the resignation before its effective date raises a clear issue of law. The resignation is not effective. Schafer v. Board of Education, 94 N. E. 2d. 112.

One who resigns an office may recall or revoke his resignation at any time before it is accepted. In Re. Fidelity Assur. Ass'n., 42 F. Supp. 973, reversed Sims v. Fidelity Assur. Ass'n., 129 F. 2d. 442, affirmed 63 S. Ct. 807, U.S. 608, 87 L. Ed. 1032; Poland v. Glover, 111 F. Supp. 675.

In Haine v. Gooze, 248 F Supp. 349 (1965), Judge Weinfeld stated:

> "The Court concludes upon the facts here presented that the plaintiff as a matter of law, had the right to withdraw her resignation before it was accepted, and that her request for its destruction

> rendered it ineffective; that the refusal to give effect to her right to withdraw the resignation constituted agency action which separated her from the service contrary to her rights under the Veterans Preference Act." 248 F. Supp. at 352

The appellees contend that the agency accepted the resignation before it was withdrawn. The Personnel Director, George R. Porter, testified that he accepted the resignation and also stated he refused to permit it to be withdrawn. There has been no showing that the Director, National Bureau of Standards ever knew about the resignation.

In respect to the Defense of Laches, it is noted that the Court of Appeals ignored it.

Taking an objective view of the facts, the resignation was withdrawn before accepted.

CONCLUSION

That Glynn H. Goodman be restored to his position as electrician in the National Bureau of Standards and back pay be restored to him.

Respectfully submitted,

Donald H. Dalton
Attorney for Appellant

IN THE

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22521

GLYNN H. GOODMAN, Appellant

v.

THE UNITED STATES OF AMERICA, ET AL, Appellees

JOINT APPENDIX

INDEX TO JOINT APPENDIX

Filed November 15, 1968

ORAL RULING OF THE COURT

THE COURT: Well, I cannot go along with you, Mr. Dalton. I cannot see how I can sit here and second guess the Board of Appeals which made a substantial record and which interpreted that record to uphold their position. I cannot second guess them on the facts if there is a record which will support their opinion, and I think there is a record. I have read it very carefully. Whether I agree with them or whether I do not in their interpretation of that record, that record will support their view if they want to adopt it; and if that is so, then my hands are tied.

So, I will grant the summary judgment to the defendants.

Civil Action No. 2757-64, Filed October 16, 1968

O R D E R

Upon consideration of defendant's motion for summary judgment and plaintiff's motion for summary judgment, and of argument of counsel, and it appearing to the Court that there is a rational basis in the evidence for the conclusions of the Civil Service Commission and that its

action should be upheld, it is by the Court this 16th day of October, 1968

ORDERED that defendant's motion for summary judgment be and it hereby is granted and that the above entitled cause be and it hereby is dismission, and it is further

ORDERED that plaintiff's motion for summary judgment be and it hereby is denied.

UNITED STATES DISTRICT JUDGE

I RESIGN FOR THE FOLLOWING REASONS:

Oct 5 1961
(DATE RESIGNATION IS WRITTEN)

To go outside to advance myself for a better position.

OCT 6 11 8
PERSONNEL - DIVISION

The effective date of my resignation will be Oct 27-1961

Elyon H Goodman
(SIGNATURE)

PART IV. SEPARATION DATA

FORWARD COMMUNICATIONS, INCLUDING SALARY CHECKS AND BONDS, TO THE FOLLOWING ADDRESS:

(Street) (City) (Zone) (State)

PART I. (Continued)

F. Remarks by Requesting Office:

(1) Unsuitability for employment in the National Bureau of Standards as evidenced by repeated use of intoxicating beverages to excess.
(2) Intentional deception in obtaining your appointment.
(3) Conduct unbecoming a Government employee.
(4) Intentional false and misleading statements on an official document.

PART II. (Continued)

19. STANDARD FORM 50 REMARKS

☐ Subject to completion of 1 year probationary (or trial) period commencing _____

☐ Service counting toward career (or permanent) tenure from: _____

☐ Successor position—employee retained in the competitive service.

☐ Entrance performance rating satisfactory

Separations: Show reasons below, as required. Check, if applicable: ☐ During probation ☐ From appointment of 6 months or less

U. S. GOVERNMENT PRINTING OFFICE : 1957 O-F-433564

PART I. REQUESTING OFFICE: Unless otherwise instructed, fill in all items in this part except those inside the heavy lines. ... cable, obtain resignation and separation data on reverse side

1. NAME (Last—First—Middle—Mr.—Miss—Mrs.) #22690	2. DATE OF BIRTH	3. IDENTIFICATION (Optional)	A. Request Number
GOODMAN. Glynn H.	7/2/25		6218

3. Kind of Action Requested:
(1) Personnel (Specify appointment, reassignment, resignation, etc.)
Resignation (Career)
(2) Position (Specify establish, review, abolish, etc.)

C. Proposed Effective Date: 10/27/61
D. Date of Request: 10/5/61
E. Position Sensitivity: ~~Sensitive~~ Non-sensitive

5. NATURE OF ACTION (Use standard terminology)
6. EFFECTIVE DATE OF ACTION: close of business 10-27-61
7. CIVIL SERVICE OR OTHER LEGAL AUTHORITY

FROM—		TO—
Electrician (L-160)	8. POSITION TITLE AND NUMBER	
W-2805-9, $2.79 p.h. , 3rd Step	9. SERIES, GRADE, SALARY	
50 - Plant Division 02 - Electric Shop	10. NAME AND LOCATION OF OFFICE BY WHICH EMPLOYED	
National Bureau of Standards Washington, D.C.	11. DUTY STATION	
☐ Yes	12. APPORTIONED POSITION	☐ Yes STATE: Maryland ☐ Apportionment Waiv... ☐ Prov...

F. Remarks by Requesting Office (Continue in item F on reverse side, if necessary. Show, if applicable, any known additional or modified reasons for resignation)

Supervisor: George V. Hall, Foreman, Electric Shop

Resigned while action was pending to be separated f... (1) (2) (3) (4) (all ones)

G. Requested by (Signature and Title): W.T. Taylor, Admin. Officer
H. For additional information Call (Name and telephone number)

I. Request approved by:
Signature: B. Quinn, Acting Chief
Title: Plant Division

PART II. TO BE COMPLETED BY PERSONNEL OFFICE (Items inside heavy lines in Part I above also to be completed)

13. VETERAN PREFERENCE

No.	5-pt.	10-pt. Disab.	10-pt. Other
		X	

14. TENURE GROUP: I A

15. POSITION TO BE OCCUPIED IS IN THE: [X] Competitive Service ☐ Excepted Service

16. APPROPRIATION
From:
To:

17. PAYROLL DEDUCTIONS

CSR	FICA	FEGLI
X		X

J. Position Classification Action

New	Vice	I. A.	Regr.

K. CLEARANCES	Initials or Signature	Date
(1)		
(2) CEIL. OR POS. CONTROL		
(3) CLASSIFICATION	[signature]	10/6/61
(4) PLACEMENT OR EMPL.	[signature]	10/6/61
(5)		
(6) APPROVED BY:		

(7) Remarks: (Note: Use item 19 on reverse for Standard Form 50 re...)
Qualification Standard: 2810 to payroll

Promulgated by U.S. Civil Service Commission—FPM-R-1

NOTIFICATION OF PERSONNEL ACTIC

50-106-04

1. NAME (LAST [CAPS]—First—Middle—Mr.—Miss—Mrs.)	2. DATE OF BIRTH	3. IDENTIFICATION (optional)
GOODWIN, Glynn H.(Mr.) #22690	7-2-25	NBS 16

4. THIS IS AN OFFICIAL NOTICE OF THE PERSONNEL ACTION DESCRIBED BELOW, WHICH AFFECTS YOUR EMPLOYMENT. GENERAL INFORMATION CONCERNING YOUR EMPLOYMENT APPEARS ON THE REVERSE SIDE OF THIS FORM.

5. NATURE OF ACTION (standard terminology must be used)	6. EFFECTIVE DATE OF ACTION	7. CIVIL SERVICE OR OTHER LEGAL AUTHORITY
Resignation (Career)	Close of Business 10-27-61	

FROM—		TO—
Electrician (L-160)	8. POSITION TITLE AND NUMBER	
W-2805-9 $2.79 p.h. (3rd Step)	9. SERIES, GRADE, SALARY	
National Bureau of Standards 50. Plant 2. Electric Shop Washington,D.C.	10. NAME AND LOCATION OF OFFICE BY WHICH EMPLOYED	
	11. DUTY STATION	
[ ] Yes	12. APPORTIONED POSITION	[ ] Yes STATE: Maryland [ ] Apportionment Waived [ ] Proved

OFFICE OF INVESTIGATIONS SECURITY
1961 OCT 31 AM 10 09

13. VETERAN PREFERENCE				14. TENURE GROUP	15. POSITION OCCUPIED IS IN THE:	
No	5-pt.	10-pt. Disab.	10-pt. Other		Competitive Service	Excepted Service
		X		I-A	X	

16. APPROPRIATION	17. PAYROLL DEDUCTIONS			18. DATE OF APPOINTMENT AFFIDAVITS (accessions only)
From: To:	CSR	FICA	FEGLI	
	X		X	

19. REMARKS:

[ ] a. Subject to completion of 1 year probationary (or trial) period commencing

[ ] b. Service counting toward career (or permanent) tenure from:

Separations: Show reasons below, as required. Check, if applicable: [ ] c. During probation [ ] d. From appointment of 6 months or less

Reason: "To go outside to advance myself for a better position."
Address: 3404 Taylor Street
Brentwood, Maryland.
Any accumulated and accrued leave to be paid in a lump sum.
Resigned while action pending to be separated for:
(1) Unsuitability for employment in the National Bureau of Standards as evidenced by repeated use of intoxicating beverages to excess.
(2) Intentional deception in obtaining your appointment.
(3) Conduct unbecoming a Government employee.
(4) Intentional false and misleading statements on an official document.

Security Control Officer of the [illegible] of Commerce has been requested [illegible] the investigative file on this [illegible] the Investigations Division of [illegible] Service Commission, Washington, D. C.

Social Security No. 260-03-0267

20. EMPLOYING DEPARTMENT OR AGENCY	22. SIGNATURE (or other authentication) AND TITLE
DEPARTMENT OF COMMERCE	S/ George R. Porter, Personnel Officer
21. OFFICE MAINTAINING OFFICIAL PERSONNEL FOLDER (if different than item 10, above) National Bureau of Standards Washington,D.C.	23. DATE: 10-24-61

PART III. SEPARATIONS

GENERAL INSTRUCTIONS FOR ALL TYPES OF SEPARATIONS

1. *Under "Effective Date."*—Use the date the employee is separated from the rolls, except in the following circumstances:
   a. If separation is because employee is not returned to duty after military furlough, use date immediately preceding the date on which the furlough became effective.
   b. If separation is through death, use date of death.
2. *Under "Nature of Action."*—Add the following information to the specific term listed under this Part below:
   a. "Part-time," "intermittent," or "WAE," if employee was paid on that basis.
   b. ★"From ..... (Type) Appt." if separated from an excepted, temporary, or indefinite appointment in the departmental service.
   c. "Involuntary" if separation (including resignation) other than by reduction in force, *after 20 years of service*, is considered involuntary for retirement purposes, as explained on page R–5–44.★
3. *Under "Remarks."*—Show the following information, when applicable:
   a. Total amount of leave without pay, if the employee was carried in a nonpay status for more than 130 eight-hour work days during the calendar year in which he is separated. (Not required if separation is for the purpose of accepting other Federal employment.)
   b. ★Lump sum payment to cover ..... hours ending ..... (Date and hour)
   (While entry of this item is not mandatory, it is desirable in order to facilitate adjudication of unemployment compensation claims, as well as for other purposes. Agencies are therefore urged to include this item where feasible.)★
   c. "During probationary period," if employee resigns or is separated during the probationary period.
   d. If derogatory facts known at the time of an employee's separation reflect upon his suitability for Federal employment ★ or eligibility for unemployment compensation,★ and his separation was not based upon this derogatory information, give sufficient details to enable the Commission to determine his reemployment eligibility,★ or a State to determine entitlement to benefits. ★
   ★ e. If an employee was offered further employment by the agency to any position prior to the separation, state this fact, and give the title, grade (if grade was assigned) salary, and the geographic location of any position to which an offer was made (e. g., "Offered position of Clerk GS–3, $3,345 in Baltimore, Md.").

4. IMPORTANT—UNEMPLOYMENT COMPENSATION: Section 1507 (a) of the Social Security Act, as amended, directs agencies to make their findings as to reasons for termination of Federal employment available to State security agencies for purposes of adjudicating unemployment compensation claims based on Federal service. It also provides that the "finding of fact" made by a Federal agency in this respect, is final and conclusive for the purpose of making determinations of entitlement to compensation. All State unemployment compensation laws require that a claimant, to be eligible for benefits, must be able to work and be available for work. Common reasons for disqualification are discharges for misconduct or quits without good cause. (See Chapter C–3, "Unemployment Compensation.")

The regulations governing compensation for unemployment for Federal employees designate Standard Form 50 as the source document from which agency payroll offices furnish reasons for separations to State agencies. Because of the finality provisions of the Federal law and the good cause provisions of State laws, it is necessary that a factual statement of reasons for all separation actions be shown on Standard Form 50, either in the "Remarks" column or in the "Nature of Action" column, as required under this PART, so that adequate and complete information can be forwarded to State agencies. Avoid summary reasons, such as, "personal reasons," "ill health," or other generalized statements which do not associate reasons with the job or other working conditions, wherever possible. Instead, give brief factual statements, such as, "to accompany husband to new duty station in Lancaster, Pa.," "doctor indicates fumes in paint spray room aggravate asthmatic condition." Inadequate or incomplete information as to the reasons for separation may result in delay or denial of claims which should be paid, or failure to disqualify claimants who are not eligible for benefits. In cases of resignation where sufficient data cannot be obtained, add a statement to that effect.★

Cause of Separation	Nature of Action (and Additions Thereto)	Civil Service or Other Legal Authority	Remarks
Separation because of retirement.	★"Retirement," and add one of the following, as applicable: —Mandatory —Disability —Optional★		[See Item 3d under General Instructions, above.]

Separation initiated by employee (other than by retirement).	1. "Resignation," and *add*, if applicable, "to accept (type) appt. in (agency)." 2. "Separation—to accept (type) appt. in (agency)." 3. "Separation—Transfer." 4. "Resignation—★Unable to Accompany Activity to _____.★		★Enter the factual reason(s) for resignation (see Items 3d and 4 in General Instructions, above), unless it is stated in the nature of action column. *In addition,* show one of the following items, if applicable:★ 1. "Resigned while action pending to be separated for _____".[1] 2. "Resigned while charges were being prepared for _____". 3. "Resigned after being advised that a letter of charges was being prepared for _____". 4. "With reemployment rights in (*agency*) under (*authority*).
Separation because of entry into the military service.	1. "Separation—MIL." 2. "Resignation—MIL." 3. "Separation—No Return from Military Furlough."		For separations (other than by death) of employees on military furlough, if applicable, a statement that the reason the employee was not restored was: Because of physical or mental condition; or Because separation from the military service was under other than honorable conditions.
Separation of an indefinite employee in order to place a career or career conditional employee.	"Separation—Displacement."		★[See Item 3d under General Instructions, above.]★
Separation when the employee abandons his position and removal procedures under Parts 9 or 22 are not applied.	"Separation—Abandonment of position."		★[See Item 3d under General Instructions, above.]★
Separation resulting from reduction in force.	1. "Reduction-in-Force." 2. "Resignation—RIF."		1. Date of notice given the employee, type of appointment from which separated, and his reemployment rights in another agency, if any. ★ ★ ★ ★ ★ [See Item 3d under General Instructions, above.]

[1] This entry is required in cases where the pending separation was directed by the Commission, as well as in cases where the pending separation was initiated by the agency.

(Continued next page)

No. 22521

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

GLYNN H. GOODMAN,

Plaintiff-appellant,

v.

UNITED STATES OF AMERICA, ET AL.,

Defendants-appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE APPELLEES

WILLIAM D. RUCKELSHAUS,
Assistant Attorney General,

DAVID G. BRESS,
United States Attorney,

MORTON HOLLANDER
STEPHEN R. FELSON,
Attorneys,
Department of Justice,
Washington, D. C. 20530.

I N D E X

CITATIONS

Cases:

* Cases or authorities chiefly relied upon are marked by asterisks.

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Cases continued:

Regulations:

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22521

GLYNN H. GOODMAN,

Plaintiff-appellant,

v.

UNITED STATES OF AMERICA, ET AL.,

Defendants-appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE APPELLEES

STATEMENT OF THE ISSUES PRESENTED

Whether the district court correctly refused to overturn the decision of the Civil Service Commission holding that appellant's resignation from federal employment was voluntary. 1/

STATEMENT OF THE CASE

This is an action for reinstatement and back pay by appellant Glynn H. Goodman; the defendants-appellees are the

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1/ This case has previously been before the Court. See Goodman v. United States, 123 U.S. App. D.C. 165, 358 F. 2d 532 (1966), which remanded the case to the district court with instructions to remand it to the Civil Service Commission for a hearing on the issue of the voluntariness of appellant's resignation.

United States, the Secretary of Commerce, the Director of the National Bureau of Standards, and the members of the Civil Service Commission. The district court originally granted appellees' motion for summary judgment and Mr. Goodman appealed. This Court reversed, holding that a hearing before the Commission was necessary on the issue of the voluntariness of Goodman's resignation. 123 U.S. App. D.C. 165, 358 F. 2d 532 (1966). After remand, such a hearing was held by the Commission, resulting in a decision that the resignation was in fact voluntary. The case then came on again before the district court, which again ordered summary judgment for the government. It is from this order that the present appeal is taken. The basic facts are generally not in dispute, and may be stated as follows:

Mr. Goodman was an electrician with the National Bureau of Standards (Department of Commerce) from 1958 to 1961 (App. 11). 2/ Sometime in 1961, Goodman was investigated in an attempt to obtain for him a secret clearance which would entitle him to enter restricted areas unescorted (I.Tr. 143). 3/

2/ "App." references are to the Joint Appendix in No. 19654, the case previously before the Court, which was incorporated as an appendix in the instant appeal on motion of appellant.

3/ "I.Tr." refers to the transcript of the February 14, 1967, hearing before the Civil Service Commission. "II.Tr." refers to the transcript of the March 20, 1967, hearing.

This investigation revealed numerous serious instances of misconduct on Goodman's part. 4/ The agency therefore determined to discharge Goodman for cause.

On October 3, 1961, Mr. Goodman was called to a meeting at the Plant Division Office. Also present at this meeting were Mr. Coiner, Personnel Management Specialist, Mr. Quinn, Assistant Chief of the Plant Division, Mr. Taylor, Administrative Assistant in the Plant Division, and Mr. Augustine, Assistant Electrician Foreman. At this meeting, Goodman was shown an unsigned copy of the proposed notice of charges, which he read (e.g., I.Tr. 118). It was carefully explained to him that he had the right under the Departmental regulations to resign before charges were brought, which would prevent the charges from going into his record (I.Tr. 117-118, 175). Goodman claims that he was strongly urged to resign, that he was promised a transfer "downtown" and that he was told he could return to his job in one year (II.Tr. 55, 60). The agency representatives testified precisely to the contrary (I.Tr. 117, 120, 126, 144, 148, 149-150, 175). In any event, it is undisputed that, after forty-five minutes, Goodman left the meeting, stating that he wished to see a lawyer and that he would also like to talk to Mr. Porter, the Personnel Officer, before deciding what to do (I.Tr. 48, 98, 118, 146). Goodman took with him a copy of the

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4/ The merits of the charges are not before the Court. The letter of charges, dated October 4, 1961, may be found in the record on appeal. It deals primarily with a series of arrests and some convictions for drunkenness, carrying a concealed weapon, and contributing to the delinquency of a minor, along with the failure to disclose these events when seeking federal employment.

proposed notice of charges (II.Tr. 2 -- this is a correction of Goodman's earlier testimony to the contrary, I.Tr. 78).

Goodman did in fact consult with Mr. Porter, the Personnel Officer, the next day, October 4 (I.Tr. 48, 66, 147; II.Tr. 7-9). The only testimony ccncerning this meeting is to the effect that Goodman was neither told, urged or advised to resign, and that no promises were made as to future employment (I.Tr. 147; II.Tr. 7-9, 45). In fact, Goodman accepted the notice of charges, stating that he was prepared to fight them (I.Tr. 151). It was reiterated at this time that the charges would go into his record once they were accepted (II.Tr. 15).

Mr. Porter was therefore surprised (II.Tr. 43) when Mr. Goodman returned to his office the next day (October 5) and stated: "I showed this letter [of charges] to someone, they advised me to resign immediately, and I guess that is what I want to do" (I.Tr. 153; see also id. at 211). He then filled out that part of Form 52 (Request for Personnel Action) which was "To Be Completed By Employee" (I.App. 5), where he stated that his reason for resigning was "to go outside to advance myself for a better position." The agency completed its assigned portion of the form by stating that the resignation took place "while action pending to be separated for" the four reasons set out in the notice of charges (I.App. 4, 5). The Notification of Personnel Action (Form 50) repeated this information (I.App. 6). The agency accepted the resignation at this time; the effective date was stated to be October 27, 1961 (I.App. 5). On October 16, Goodman (through

his attorney) attempted to withdraw the resignation, but the agency refused to accept the attempted withdrawal (I.App. 13).

Some twenty-nine months later Goodman attempted to appeal to the Civil Service Commission, but was told that there could be no appeal from a resignation (I.App. 14). He then brought an action for reinstatement and back pay in the district court, as stated above. The government's motion for summary judgment was granted by the court, and an appeal was taken to this Court. On the authority of Dabney v. Freeman, 123 U.S. App. D.C. 166, 358 F. 2d 533 (1965), a remand was ordered for the purpose of allowing Goodman a hearing before the Civil Service Commission. The Court stated that "only in this way can the facts with reference to the alleged promises and coercion be developed with any degree of reliability." 123 U.S. App. D.C. at 166, 358 F. 2d at 533.

A two-day hearing was then held before a Civil Service Commission hearing examiner, on February 14 and March 20, 1967. Goodman was represented by counsel, witnesses were called for both sides, and documentary evidence was placed in the record. Some three hundred eight pages of testimony were taken. On June 2, 1967, the Appeals Examining Office rendered its decision. After setting out the factual contentions of both sides at some length (pp. 1-4), the decision stated (pp. 4-5):

> Upon review of the evidence pertinent to the meeting of October 3, 1961 we find that the appellant was orally advised and afforded an opportunity to read in the proposed letter of charges about his appeal rights. Additionally we find that he was advised that he could resign, and if he did

so prior to having the charges formally delivered, the matter would not be made a part of his official record.

As to the presence of the supervisory officials and not being able to leave the room until he signed the resignation or agreed to accept the charges, the primary fact is that the meeting lasted about 45 minutes and the appellant did leave the meeting stating that he wanted to meet with Mr. Porter and see a lawyer before he made up his mind what to do. Therefore, assuming (arguendo) that some pressure existed, it was relieved when the appellant left the meeting indicating that he had not yet made up his mind what to do.

* * * * *

We also note the testimony of Dr. Frank S. Caprio (transcript of February 14, 1967 pages 9-23) who first examined the appellant in December 1966. While the Doctor responded to hypothetical questions, his opinion of the appellant's case was based upon information given him by the appellant. The Doctor acknowledged he did not know what kind and how much medication had been prescribed and it would be necessary to know these factors before he could state what its effect would be on the appellant. Since the file does not reflect the kind of medication, other than Vitamin B1, we find no basis for concluding that the appellant's capacity for understanding the seriousness of the events had been impaired.

With respect to the contention that the appellant was required to make up his mind "immediately" we find from a preponderance of the evidence and considering the appellant's own admission, that there was a meeting on the morning of October 3, 1961 for approximately 45 minutes during which the entire matter was discussed and the appellant's rights were explained. Further we find that the appellant left that meeting and took the afternoon off "to see a lawyer" and he did discuss the matter, with his wife. The record further established in our opinion that the appellant met with Messrs. Porter and

> Coiner on the afternoon of October 4, 1961 when his rights were again explained and the appellant accepted the letter of charges. In addition, we find the evidence established that the appellant voluntarily appeared in the Personnel Office on the morning of October 5, 1961 when he submitted the resignation "after talking to a friend." Thus, it is apparent that the appellant did not have to make up his mind "immediately."
>
> * * * * *
>
> In the light of all the facts and circumstances including the foregoing analysis, we find that the appellant was aware of all his rights and privileges and that he had adequate time to weigh his choice of actions. Accordingly, we find that a preponderance of the evidence supports the conclusion that the resignation was the result of the appellant's exercise of his own free will and was voluntary.

On September 22, 1967, the Board of Appeals and Review affirmed this decision after a careful examination of the evidence and of the decision of the Examining Office. It also ruled that the resignation was effective when submitted under the applicable regulations (Board Decision, p.5), and that to require the agency to allow the withdrawal of a resignation after charges had been dropped in reliance upon it would create "an impossible situation with which to contend." It concluded that (id. at 7):

> In view of the above, it is the decision of the Board of Appeals and Review that Mr. Goodman's resignation was, in fact, a voluntary act on his part, and was not, in fact, a removal by his agency within the meaning of the Commission's regulations governing adverse actions * * *.

The government then moved for summary judgment in the district court on the basis of the administrative record. The

district judge, after hearing argument, concluded (Hearing of October 2, 1968, pp. 14, 16, 17-18):

> There is a substantial record here on which the Board of Appeals finally based its decision on the remand. * * * They have got four witnesses that say there was no coercion. You have got one that says there was. Now, the preponderance of the evidence as it appears from the record is that there was no coercion. They adopt that view. I don't have to adopt the view; I simply have to say they have substantial evidence on which they base their conclusion. * * * I cannot see how I can sit here and second guess the Board of Appeals which made a substantial record and which interpreted that record to uphold their position. I cannot second guess them on the facts if there is a record which will support their opinion, and I think there is a record. I have read it very carefully. Whether I agree with them or whether I do not in their interpretation of that record, that record will support their view if they want to adopt it * * *. So, I will grant the summary judgment to the defendants.

The court also denied Goodman's motion for summary judgment, and this appeal followed.

REGULATIONS INVOLVED

The Federal Personnel Manual of the Civil Service Commission provides in pertinent part (p. S-1-5, now p. 715-5):

> Section 2. Actions Initiated by Employees
>
> * * * * *
>
> Resignation
>
> * * * * *
>
> By its very nature, as a voluntary expression of the employee's desire to leave the organization, a resignation should not be demanded as an alternative to some other action to be taken or

withheld. This recognizes the fact, however, that an employee may elect to resign rather than submit to removal procedures.

A resignation is binding on the employee once he has submitted it. However, the agency may, in its discretion, permit an employee to withdraw his resignation at any time until it has become effective.

Administrative Order No. 202-20 (Revised), Department of Commerce Manual of Orders, Part 2 (Sept. 7, 1960), provides in pertinent part:

Section 3. ACTIONS INITIATED BY EMPLOYEES: (see FPM, S-1, Sec. 2) .01 Resignations:

* * * * *

5 Resignation as a Voluntary Action --

(1) A resignation, to be valid and binding, must be a voluntary act and submitted without coercion, fraud, or misrepresentation on the part of any Department representative. No employee should be requested (either officially or "unofficially") to submit a resignation, nor should any statement be made which the employee could reasonably construe as a threat. This requirement does not, however, preclude factual discussions with the employee along the lines indicated below.

(2) Whenever unfavorable information is received about the work, conduct, or character of an employee, an informal conference may be held to obtain the employee's account of the subject-matter, to indicate objectively the seriousness with which the Department views the information, and to discuss the several courses of action available to the Department and to the employee, together with the legal and administrative consequences of each possible course of action.

If, in connection with such a conference, the employee submits his resignation in writing prior to being notified expressly and specifically that his work, conduct or

> character is not considered satisfactory, his resignation may be accepted and recorded for whatever reason the employee cares to specify, without indication of the unfavorable information on the SF-50 recording the separation. * * *
>
> (3) Whenever an employee delays in submitting a resignation until after he has been notified expressly and specifically, either orally or in writing, that his work, conduct, or character is not satisfactory, he shall be advised that:
>
> a. Chapter R1 of the Federal Personnel Manual requires that remarks concerning the circumstances of the separation be included on his SF-50 * * *.

ARGUMENT

Introduction and Summary

At the outset of his argument Mr. Goodman attacks the standard of review followed by the district court, citing Dismuke v. United States, 297 U.S. 167, 172 (1936), for the proposition that an administrative decision may be overturned only if "arbitrary or capricious or unsupported by evidence" (Appellant's Brief, p. 11). However, the court below actually applied a standard much more favorable to appellant, as may be seen from the transcript of the hearing of October 2, 1968 (pp. 14, 16, 17-18). The court first noted the "substantial record" before the Board of Appeals and Review. It stated that it had "read it very carefully," and that the "preponderance of the evidence as it appears from the record is that there was no coercion." The court framed the issue as whether "they have substantial evidence on which they base their conclusion," and answered this question in the

affirmative. As we will show below, the Commission's decision was supported by the great weight of the evidence, and therefore was properly upheld by the district court under any standard of review. Nevertheless, we submit that the Court's inquiry need not go beyond a determination that the agency followed applicable procedures and did not act in a patently arbitrary manner. 5/

Appellant also makes three other attacks on the decision below: (1) that the filling in of the blanks on the resignation forms was improper and should have been held to vitiate the agency proceedings; (2) that the resignation should have been held involuntary; and (3) that the court erred in not holding that the resignation was effectively withdrawn. As we will show below, none of these arguments has merit. The Civil Service Commission held an extensive hearing on the factual issue of the voluntariness of the resignation, and considered at length every legal contention made by appellant's counsel in those proceedings. Its decision is in accord with the great weight of the evidence, and all applicable regulations were followed. The district court was therefore correct in granting the government's motion for summary judgment.

5/ While we recognize that there are decisions of this Court which sanction a "substantial evidence" approach to the review of administrative actions concerning employees, a majority of the courts of appeals holds that the only questions on review are whether the agency followed applicable regulations and whether the action was utterly arbitrary and capricious. See, e.g., McTiernan v. Gronouski, 337 F. 2d 31, 34 (C.A. 2, 1964); McEachern v. United States, 321 F. 2d 31, 33 (C.A. 4, 1963); Brown v. Macy, 340 F. 2d 115, 116-117 (C.A. 5, 1965).

A. The Employing Agency Acted Properly In Processing Appellant's Resignation.

Mr. Goodman does not dispute the fact that he was repeatedly advised by the Bureau of Standards personnel officers that the charges would go into his record if he accepted them before offering his resignation (I.Tr. 117-118, 146, 147, 155, 175, 208-209). This is fully in accord with the applicable regulations, which require that an employee who resigns after express notification of unsatisfactory "work, conduct, or character * * * shall be advised that: (a) Chapter R1 of the Federal Personnel Manual requires that remarks concerning the circumstances of the separation be included on his SF-50 * * *." Administrative Order No. 202-20 (Revised), Department of Commerce Manual of Orders, Part 2 (Sept. 7, 1960), § 3.01(5)(3). Nevertheless, he now argues (Appellant's Brief, pp. 11-17) that the agency acted improperly in noting on his personnel action forms that he resigned pending certain charges.

Since these notations were specifically required by the regulations this argument is patently without merit. Goodman points to no statute said to conflict with the regulations. And we are aware of no constitutional provision even arguably preventing an agency from noting an indisputably true fact (i.e., that the charges were pending) on an employee's record.

In fact, we submit that a contrary rule, requiring an agency to expunge serious charges of misconduct merely because the employee resigned while they were pending, would be unreasonable. Goodman had every opportunity to avoid the

"stigma" of these charges (Appellant's Brief, p. 17) by answering them, requesting a hearing, obtaining counsel, calling witnesses, etc. He at first determined to follow this course (I.Tr. 151), and only changed his mind and submitted his resignation after talking it over with a friend (I.Tr. 153, 211). It is plain that the district court was correct in concluding that the agency acted properly in completing the personnel forms according to their terms (I.App. 4-6).

B. The District Court Correctly Refused To Overturn The Commission's Finding That The Resignation Was Voluntary.

Goodman apparently argues (Appellant's Brief, pp. 17-26) both that the resignation was involuntary as a matter of law (i.e., accepting the basic facts as found by the Commission) and that, in fact, he was forced to resign by affirmative threats and false promises. At the outset, however, this Court's opinion in Dabney v. Freeman, 123 U.S. App. D.C. 166, 358 F. 2d 533 (1965), disposes of the former contention. In Dabney, "appellant resigned only after the pressure of a period of investigation, examination and questioning extending between three and four hours into the evening after the working day." 123 U.S. App. D.C. at 170, 358 F. 2d at 540. This Court nevertheless held that the question of voluntariness was one of fact, and accepted the Commission's finding that there had in fact been insufficient coercion to vitiate the resignation. In the instant case there was no such lengthy period of investigation, and, as we now show, the facts and circumstances of the resignation demonstrate conclusively that the Commission's

factual conclusion was in accord with the great weight of the evidence. A fortiorari, Goodman's claim of coercion must be rejected. Compare Rich v. Mitchell, 106 U.S. App. D.C. 343, 344, 273 F. 2d 78, 79 (1959), certiorari denied, 368 U.S. 854 (1961) ("The Director did not act illegally or improperly in telling appellant he could choose between facing charges and resigning."); Compotello v. Jones, 105 U.S. App. D.C. 412, 267 F. 2d 689 (1959); Paroczay v. Hodges, 219 F. Supp. 89 (D.D.C., 1963) (demand for immediate resignation held coercive).

In the first place, the undisputed facts themselves negate any possibility of a coerced resignation. It is conceded that the October 3, 1961, meeting, which lasted only forty-five minutes, resulted in Goodman being undecided as to which course to follow and stating that he wished to consult with a lawyer and with Mr. Porter, the Personnel Officer (I.Tr. 48, 98, 118, 146). Therefore, regardless of the resolution of the conflict in testimony as to what was said at this meeting, a coerced resignation did not result. In fact, the very next day, Goodman decided not to resign but rather to contest the charges (I.Tr. 151). Understandably, Mr. Porter was "surprised " the following day when Goodman changed his mind after talking with a friend and decided to resign (I.Tr. 43, 153, 211). On these facts alone, the Appeals Examining Office of the Civil Service Commission was justified in finding that "the appellant was aware of all his rights and privileges and that he had adequate time to weigh his choice of actions" (Opinion of Appeals Examining Office, p. 5), and therefore that no coercion existed.

With respect to the credibility questions resolved by the Commission, the proper standard of review is that

> the conclusion of the trier is to be accorded great weight. The job of hearing the evidence and drawing a conclusion was the Commission's and review of its work in the District Court involves not an independent determination by it from the cold record but, rather, a scrutiny of that record to see whether it is so lacking in support as to make the Commission's action unacceptably arbitrary.

Dabney v. Freeman, supra, 123 U.S. App. D.C. at 170, 358 F. 2d at 537 (footnote omitted). As a review of the record clearly shows, there was overwhelming support for each of the three such questions resolved by the Commission. While we do not believe that the Court need reach this problem in light of the undisputed facts as set out above, we submit that the Commission's conclusions were perfectly reasonable in view of the evidence before it.

The conflicting testimony involves Goodman's assertions that he was strongly urged to resign and promised later reemployment (I.Tr. 55, 60), and that his mental state at the time was such that he could not have made a voluntary decision to resign (see Appellant's Brief, p. 18). The agency witnesses testified unequivocally that Goodman was merely advised of his alternatives and was not in any way pressured into submitting a resignation (I.Tr. 117, 120, 126, 144, 148, 149-150, 175). They also testified that he seemed calm and collected under the circumstances (I.Tr. 121, 150-151, 155-156; II.Tr. 11, 13). A psychiatrist called by Mr. Goodman answered some

hypothetical questions about people under medication, but no testimony was offered concerning what type of medication, if any, Mr. Goodman had been taking. The psychiatrist stated that he had not examined Goodman until more than five years after the resignation (I.Tr. 11). On the basis of this testimony, the Commission was unable to accept Goodman's allegations of coercion, and found instead that "a preponderance of the evidence supports the conclusion that the resignation was the result of appellant's exercise of his own free will and was voluntary" (Opinion of Appeals Examining Office, p. 5). With respect to the medical testimony, it found that "the opinion of the appellant's case was based upon information given him by the appellant. The Doctor acknowledged he did not know what kind and how much medication had been prescribed and it would be necessary to know these factors before he could state what its effect would be on the appellant. Since the file does not reflect the kind of medication, other than Vitamin B1, we find no basis for concluding that the appellant's capacity for understanding the seriousness of the events had been impaired" (id. at 4-5). 6/ These findings were affirmed by the Board of Appeals and Review. In view of the evidence

---

6/ We note that the psychiatrist's statement set out at page 18 of Appellant's Brief is not accompanied by a transcript citation. We were unable to locate this statement in the transcript.

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before the Commission, they cannot in any way be termed "unacceptably arbitrary."

For these reasons the district court was correct in refusing to disturb the Commission's finding that no coercion existed. The facts of this case certainly do not present a coercive situation as a matter of law; the undisputed testimony shows that Goodman in fact made up his own mind in deciding to resign; and, even if the Court finds it necessary to examine the factual matters in dispute, it is plain that the district court correctly determined that "the preponderance of the evidence as it appears from the record is that there was no coercion" (Hearing of October 2, 1968, p. 16). 7/

C. There Was No Effective Withdrawal Of The Resignation.

Appellant's final argument (Appellant's Brief, pp. 26-27) is that his resignation, while concededly accepted upon submission by the Personnel Officer (id. at 27), was ineffective because withdrawn before its effective date (thirteen days later) and before it was brought to the attention of the Director of the National Bureau of Standards. This argument is plainly without merit.

In the first place, Goodman does not mention the explicit Civil Service Commission regulation on the subject, which

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7/ We do not understand the relevance of the regulation set out at pages 22-23 of Appellant's Brief except as a restatement of the principle that coercion is impermissible. We would point out, however, that that regulation was promulgated after Paroczay v. Hodges, supra, was decided (i.e., after 1963), so that it was not in effect at the time of Goodman's resignation.

states that "a resignation is binding on the employee once he has submitted it." Federal Personnel Manual, p. S-1-5 (now 715-5), § 2 (emphasis added). He makes no attack on the validity of this regulation. Indeed, as the Board of Appeals and Review pointed out (Board Decision, p. 5):

> The Board cannot help but observe what chaos would result, if every time an employee against whom adverse action was proposed could defeat the agency's decision to do so simply by filing a resignation to be effective in the future and then, after inducing the agency to drop its proceedings on the basis of the submission of the resignation, go ahead and withdraw the resignation. It would be an impossible situation with which to contend. The Board finds that Mr. Goodman's resignation was valid and the agency was under no obligation to honor a request for withdrawal of that resignation prior to its effective date.

Thus it is clear that the regulation serves a valid purpose and was properly followed by the agency.

The only authority cited by appellant which deals with resignations by federal employees is Haine v. Googe, 248 F. Supp. 349 (S.D.N.Y., 1965). In that case the withdrawal took place before it was accepted by the agency; it was held not to be effective upon submission because the above-mentioned regulation had not yet been promulgated. Id. at 351, n. 3 Haine therefore has no bearing upon the instant case, and the Commission's regulation must be held to control. See Public Utilities Comm'n of California v. United States, 355 U.S. 534, 542-543 (1958) (administrative regulation has the force of law); Leslie Miller, Inc. v. Arkansas, 352 U.S. 187 (1956) (same).

CONCLUSION

For the foregoing reasons, the order of the district court should be affirmed.

Respectfully submitted,

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APRIL 1969

GPO 870-015

REPLY BRIEF FOR GLYNN H. GOODMAN, APPELLANT

IN THE

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22521

GLYNN H. GOODMAN,

Appellant

v.

UNITED STATES OF AMERICA, ET AL.,

Appellees

An Appeal From The United States District Court

For The District of Columbia

Donald H. Dalton
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IN THE

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REPLY BRIEF FOR APPELLANT

The Supreme Court of the United States, in William J. McCarthy v. United States, No. 43, October Term, 1968, Decided April 2, 1969 sets the procedure to be followed in a guilty plea. In a resignation case at the agency level, the same safeguards should be observed, to prevent injustices and to prevent speculation, which the Civil Service hearing has not erased, according to the Appellant's theory of the case. Appellant contends that the resignation was involuntary:

Chief Justice Warren stated:

> "On the other hand, had the District Court scrupulously complied with Rule 11, there would be no need for such speculation. At the time the plea was entered, petitioner's own replies to the Court's inquiries might well have attested to his understanding of the essential elements of the crime charged, including the requirement of specific intent, and to his knowledge of the acts which formed the basis for the charge. Otherwise, it would be apparent to the Court that the plea could not be accepted."

McCarthy v. United States, No. 43, October Term, 1968, Decided April 2, 1969.

Inasmuch as a forced resignation should be treated with the same protection as a guilty plea in a criminal case, Standards of decency must insure that a citizen and his livelihood are not parted ipso facto.

A resolution on June 24, 1959, of the District Court by the consensus of opinion of the judges that when a defendant in a criminal case enters a guilty plea, he is interrogated by or under direction of the Court to establish the following facts:

> "1. That defendant has been advised and understands that he has a right to a speedy trial by jury with the aid of counsel, but will have no such right if his plea of guilty is accepted.
>
> "2. That he will have the assistance of counsel at the time of sentence if the plea is accepted.
>
> "3. That defendant understands the nature of the charges against him which should be stated to him in brief by the Court notwithstanding a prior reading of the indictment.
>
> "4. That defendant did in fact commit the particular acts which constitute the elements of the crime or crimes charged.

"5. That the guilty plea has not been induced by any promise or representation by anyone as to what sentence will be imposed by the Court.

"6. That he has not been threatened or coerced by anyone into making the guilty plea.

"7. That no promises of any kind have been made to him to induce the guilty plea.

"8. That he has an understanding of the consequences of entering the plea of guilty.

"9. That he is entering the plea voluntarily and of his own free will because he is guilty and for no other reason.

"10. That he has discussed the entry of his plea of guilty fully with his attorney."

The Civil Service Commission FPM Supplement 752-1, Subchapter 52, Paragraph S2-2g, had the same intent as the Supreme Court in McCarthy, supra and the District Judges consensus of opinion.

The removal of Goodman by an involuntary resignation and without the right of counsel is illegal, an excessive use of executive authority. See Constitution, Art. II, Sec. 2, Clause 2; Myers v. United States, 272 U.S. 52; Humphrey v. United States, 29 U.S. 602; Panama Refining Company v. Ryan, 293 U.S. 388; Schechter v. United States, 295 U.S. 495; United States v. Corliss Steam Engine Co., 91 U.S. 321; Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 72 S. Ct. 863, 867.

In reply to paragraph c of appellees' brief on the withdrawal of the resignation, appellant has incorporated his brief in Goodman v. United States, NO. 19654, on this point.

CONCLUSION

That appellant be restored to his position as electrician in the National Bureau of Standards and be granted back pay.

Respectfully submitted,

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